Reversed.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~209~~. 29

THE DELAWARE RAILROAD CONSTRUCTION COMPANY AND THE DELAWARE COUNTY RAILROAD COMPANY, APPELLANTS,

vs.

LEWIS H. MEYER AND WILLIAM DENNISON, TRUSTEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED OCTOBER 10, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 209.

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1, 2 Pleas in the circuit court of the United States of America, in and for the district of Iowa, at a term thereof begun and holden at the United States court room in the city of Des Moines and district aforesaid, on the second Monday of May, the same being the eighth day of May, 1876, before the Hon. John F. Dillon, United States circuit judge for the eighth circuit, and Hon. James M. Love, United States district judge for said district of Iowa.

3, 4 Be it remembered that heretofore, to wit, on the 4th day of May, 1875, Lewis H. Meyer, by Mess. Grant & Smith, his attorneys, filed in the clerk's office of the circuit court of the United States for the district of Iowa his bill of complaint against the Davenport & S't Paul Railroad Company, and others, which said bill of complaint is in the words and figures following, to wit:

5 *Bill in equity.*

Circuit court of the United States for the district of Iowa.

MOSES DEWITT LOOMIS
vs.
THE DAVENPORT AND S'T PAUL RAILROND Company, the Davenport Railway Construction Company, & others.

To the judges of the circuit court of the United States for the district of Iowa:

1. Lewis H. Meyer, who avers that he is a citizen of the State of New York, brings this bill of equity against the Davenport & S't Paul Railroad Company, the Davenport Railway Construction Company, the Delaware Construction Company, citizens of the State of Iowa; William Dennison, a citizen of the State of Ohio; Ambrose Bilsby, Andrew Mundy; Benjamin Burch, surviving partner of B. & H. M. Burch;
6 John L. Davies & Son, Beiderbeck & Miller, W. C. Wadsworth & Co., Francis W. Frenchy, R. Krause, Childs & Co., L. Lowenstein & Co., Lowell, Corbett & Co., M. Foley; Benjamin Burch, J. H. Lakin William Burch, composing the firm of Burch, Lakin & Co.; Robert Vantyne and Jason L. Payne; Sarah E. Burch, administratix of the estate of K. M. Burch, deceased; Charles M. Lockwood, Richard Moore; H. S. Babcock, and Geo. H. French, his assignee; M. L. Rogers, First National Bank of Davenport, Hiram Price, Daniel Stevens, Richard Ellwood, John Hornby, Lewis Beel, C. S. Peet, Lucias Howard, Brown & Martin, the Delaware Railway Construction Company, Leroy Jackson, S. Denton & Co., Westfall & Heines, Elizar Davis, J. H. Leach, E. Hoag; L. S. Davies, surviving partner of John L. Davies & Son, all citizens of the State of Iowa, and the Western Car Company, a citizen of the State of Ohio.

7 2. Said Meyer avers that, on the 21st day of December, 1874, he was appointed a trustee of the mortgage or deed of trust, hereinafter named, in place of John Edgar Thomson, who was a trustee under said deed of trust, and who departed this life on the 22nd of May, A. D. 1874.

3. Said Meyer avers that his appointment was in accordance with the powers confered on the bondholders in a certain supplemental mortgage made, executed, and delivered on the first day of July, A. D. 1871, a copy of said appointment is hereto annexed, marked "Exhibit A."

4. That on the 1st day of July, 1871, there was executed and delivered to William Dennison, a citizen and resident of the State of Ohio,

Delaware Co. R. R. Co.

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6 John L. Davies & Son, Beiderbeck & Miller, W. C. Wadsworth & Co., Francis W. Frenchy, R. Krause, Childs & Co., L. Lowenstein & Co., Lowell, Corbett & Co., M. Foley; Benjamin Burch, J. H. Lakin William Burch, composing the firm of Burch, Lakin & Co.; Robert Vantyne and Jason L. Payne; Sarah E. Burch, administratix of the estate of K. M. Burch, deceased; Charles M. Lockwood, Richard Moore; H. S. Babcock, and Geo. H. French, his assignee; M. L. Rogers, First National Bank of Davenport, Hiram Price, Daniel Stevens, Richard Ellwood, John Hornby, Lewis Beel, C. S. Peet, Lucias Howard, Brown & Martin, the Delaware Railway Construction Company, Leroy Jackson, S. Denton & Co., Westfall & Heines, Elizar Davis, J. H. Leach, E. Hoag; L. S. Davies, surviving partner of John L. Davies & Son, all citizens of the State of Iowa, and the Western Car Company, a citizen of the State of Ohio.

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4. That on the 1st day of July, 1871, there was executed and delivered to William Dennison, a citizen and resident of the State of Ohio,

Delaware Co. R. R. Co.

and John Edgar Thomson, of the city of Philadelphia, State of Pennsylvania, a certain deed or indenture of mortgage, now shown to
8 the court, a copy of which is hereto annexed and made a part hereof, marked "Exhibit B," and a certain other indenture, of date the 1st day of July, 1871, and acknowledged the 16th day of May, 1872, signed by Geo. H. French, as President, and W. H. Price, secretary of the Davenport and S't Paul Railroad Company, and J. Edgar Thomson and W'm Dennison, as trustees, a copy of which is hereby annexed, marked "Exhibit B B," under which your petitioners claim relief, as well as under said first mortgage, herein mentioned, for the purpose of securing the payment of certain bonds, also executed and delivered by said company, to the amount of twenty thousand dollars per mile of the line of said company's road upon which the work of grading, bridging, and tieing shall have been completed, and to be issued from time to time as the said road should progress, said bonds bearing interest at the rate of seven per centum per annum free of United States taxes, payable semi-annually, on the first days of January and
9 July in each year, at the company's agency, either in New York, London, or Frankfort. Said bonds, both principal and interest, are to be paid in gold coin.

5. Your petitioners aver that said bonds were of the denomination of one thousand dollars, and were to be payable to John Edgar Thomson or bearer on the first day of July, one thousand nine hundred and eleven (1911), in the city of New York, in United States gold coin of or equal to the present standard.

6. That by the terms of said mortgage only $20,000 per mile for each mile of main line of said road upon which the work of grading, bridging, and tieing should have been completed were to be issued, and the issue was to be continued in that manner as the road progressed.

7. That only one hundred and twenty-four miles of the main
10 line of said line of said road was graded, bridged, and tied from Duck Creek north of Davenport to Fayette, and the said railroad company and said construction company and said trustees, pretending that 150 miles had been so graded, bridged, and tied, issued and delivered to divers persons, of whom the plaintiff is the trustee, three millions of bonds; and in violation of said mortgage and its terms, issued afterwards, without grading, bridging, and tieing any more than said 124 miles, *issued* to certain other persons about four hundred and fifty thousand dollars in bonds, which your petitioner is informed are valid in the hands of the holders, except those in the hands of Moses De Witt Loomis, the original plaintiff in this suit.

8. That by said deed of trust or mortgage the said railroad corporation, to secure the payment of the principal and interest on said
11 trust-bonds, did grant, bargain, sell, and convey unto said parties of the second part, and to their successor or successors, as trustees, all and singular the road, bridges, and superstructure of the said Davenport and S't Paul Railroad, including all branches, side-tracks, additions, turnouts, right of way, depot grounds, coal lands, timber lands, and other lands then owned or thereafter to be acquired by said party of the first part, all depots, station-houses, grain-houses, engine house, car-houses, water-tanks, freight-houses, grain-elevators, wood-houses, coal-houses, car-shops and machine-shops, and all other buildings whatsoever, now erected or hereafter to be erected; also, all kinds of machinery and tools now held or owned or hereafter to be acquired by said party of the first part for use in connection with the said railroad, including all locomotives, tenders, cars, or other rolling-stock or

equipments, and all tools, implements, fuel, and materials of every kind used or procured for use in the constructing, operating, repair-
12 ing, or replacing any part or parcel of said railroad, or any part of its appurtenances; also all property and franchises connected with or relating to said railroad, at any part of its business, in any wise whatever, which was held or thereafter to be acquired by the said party of the first part; and also all rights, claims, and benefits in or to any lease, contract, or agreement now made, or which may be hereafter made by the first party, with any person or persons whomsoever.

Together with all and singular the tenements and appurtenances thereto belonging or in any wise appertaining, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereto; and also all the estate, right, title, and interest whatsoever, as well at law as in equity, of the said party of the first part, of, in, to, or out of the same, and every part and parcel thereof.

To have and to hold said railroad and property and appurte-
13 nances to said trustees and their successors in trust and assigns the following expressed trust among others: that in case the said railroad company should fail to pay said principal or any part thereof, or any of the interest or any part thereof, or any of the bonds secured or intended to be secured by the same, at any time when and where the same might become due and payable according to the tenor thereof, and for sixty days thereafter, and if such default should continue for six months, then; and in either case, all of said bonds, both principal and interest, should thereupon become due and payable, and said trustees, their successors or assigns, at their direction, and on the written request of the holders of one-fourth of said bonds then unpaid, should cause the said premises, or so much thereof as should be necessary to discharge said principal and interest of all the bonds unpaid, together with expense of the sale, to be sold at public auction in the
14 city of New York, in the State of New York, after giving notice of the time and place of such sale by advertisement, published not less than once a week for six months in one or more newspapers in each of the cities of New York and Davenport, and upon such sale to execute a deed in fee-simple conveying title to the purchaser. And such trustees on such sale were authorized to pay the expenses of said sale, including a reasonable compensation for their services and enough to indemnify themselves against liability arising from their trust, and pay the residue pro rata to the holders of said bonds, first, to the payment of interest, then to the payment of principal, and, if any residue, to pay the same to the said debtor corporation.

9. That said deed of trust was duly recorded in the county of Scott, State of Iowa, December 24, A. D. 1872; Clinton Co., Iowa, June 12, A. D. 1872; Jones Co., Iowa, June 14, A. D. 1872; Clayton Co.,
15 Iowa, June 3, A. D. 1872; Delaware Co., Iowa, February 7, A. D. 1872; Fayette Co., Iowa, February 8, A. D. 1872; Howard Co., Iowa, February 28, A. D. 1872; Winneshiek Co., Iowa, February 29, A. D. 1872; and in the office of the secretary of state February 29, A. D. 1872.

10. That on the same day aforesaid, to wit, on the first day of July, A. D. 1871, the said Davenport and S't Paul Railroad Company made, executed, and delivered to the said John Edgar Thomson and William Dennison a certain other deed of trust or mortgage by way of supplement, a copy of which is hereto annexed, marked "Exhibit C."

11. That said supplemental mortgage amended article sixteen (16) of said first deed of trust, making it read as follows:

"Tenth. It is mutually agreed by and between the parties hereto that the words 'trustees' and 'trustee' respectively, as used in these presents, shall be construed to mean the person who, for the time being, 16 shall be charged with the execution of the trusts under these presents, whether such persons or person be the parties of the second part hereto, or either of them, or successors or successor of the said parties of the second part, or either of them, in said trust.

"And it is further mutually agreed that each of the said trustees shall be entitled to just compensation for any or all services which he shall hereafter render in his trust, to be paid by the said party of the first part, or out of the income of the trust property, and that neither of the trustees shall be responsible for the default or misconduct of the other, or the default or misconduct of any agent appointed in pursuance of these presents, if such agents be selected with reasonable care.

"And it is further agreed that either of the said trustees may resign and be discharged from the performance of the trust created by these 17 presents by giving notice in writing to the said party of the first part, and to his associate trustee, if there be such, of his intention to resign, to be served at least three months before the time limited therein for the taking effect of such resignation, and that the said trustees, or either of them, may be removed by the holders of the majority in interest of the whole amount of said bonds, by an instrument in writing, signed by such majority in interest.

"And it is further agreed that in case at any time hereafter the said trustees, or either of them, or any trustee hereinafter appointed, shall die, or resign, or be removed, as herein provided, or otherwise, or shall become incapable or unfit to act in said trust, a successor to such trustee shall be appointed by the holders of a majority in interest of the total amount of said bonds then outstanding by an instrument in writing, duly executed by such holders; and in case a vacancy shall at 18 any time occur in said trust by death, resignation, or otherwise, the surviving or continuing trustee shall be vested with all the rights, powers, and authorities granted by these presents to the said parties of the second part.

"And that upon the resignation or removal of any trustee, and the appointment of another trustee in his place, all the estate and interest, rights, powers, and authorities under this indenture of the trustee so resigning, or being removed shall be transferred to and become vested in the new trustee so appointed, without any further assurance or conveyance; but the trustee so resigning, or being removed, shall, on request of the party of the first part, or of the new trustee who may be appointed, immediately execute a proper deed or deeds of conveyance, to vest in such new trustee all the estate and interest, rights, powers, and authorities which were vested in or held by such resigning or removed trustee under or by virtue of these presents."

19 12. Said supplemental indenture further provides: "That no bond shall be valid or binding, or be benefitted by the provisions hereof, unless the same shall be certified by the said trustees in the form aforesaid, and the said trustees shall not at any time certify, or allow to be issued, any bonds in excess of the rate of twenty thousand dollars for each mile of the said road, upon which the work of grading, bridging, and tieing shall have been finished and completed, save as hereinafter provided."

13. Said supplemental indenture was duly signed, executed, and delivered by Geo. H. French, the president, and W. H. Price, the secretary, and attested by the seal of said Davenport and St Paul Railroad

Company, and the same was duly acknowledged by the said John Edgar Thompson and William Dennison, and duly recorded the sixteenth (16th) day of February thereafter in the office of the recorder of Scott County, Iowa, and, as your petitioner is informed, in the other counties
20 through which said railroad is located.

14. And your petitioner further avers that said Davenport and S't Paul Railroad Company afterwards, to wit, on the first day of March, A. D. 1872, made, executed, and delivered a certain other supplemental deed of trust, a copy of which is hereto annexed, marked "D," and made a part hereof.

15. That among other things provided was this: that the said indenture first mentioned herein should be so amended that, in lieu of the tenth and sixteenth articles therein contained, the said sixteenth article shall be entirely omitted from said indenture, and said tenth article, as therein contained, be amended, so that the form of the bond provided for in said first mortgage or deed of trust, dated July 1st, 1871, be made to read as follows:

"The payment of this bond is secured by a mortgage or deed of
21 trust bearing date July 1st, 1871, and by a deed supplemental to and amendatory thereof, bearing date March 1st, 1872, executed by said company on its road-bed, bridges, depot grounds and buildings, rolling-stock, machinery, franchises, and all of its property of every kind, as also net incomes, acquired and to be acquired, to John Edgar Thompson, of Pennsylvania, and William Dennison, of Ohio, trustees."

16. Said second supplemental indenture further provides that the trustees' certificate endorsed on said bonds shall be amended and be made to read as follows, to wit:

"The undersigned hereby notify that this bond is one of the series of bonds described in and secured by the within-mentioned mortgage or deed of trust, dated July 1st, A. D. 1871, and the deed supplemental to and amendatory thereto, dated March 1st, A. D. 1872."

17. Said second supplemental indenture further provides that
22 "No bond as aforesaid shall be valid or binding, or be benefitted by the provisions hereof, unless the same shall be certified by the said trustees in the form aforesaid. And that said trustees shall allow no issue in excess of the rate of twenty thousand dollars for each mile of the said road upon which the work of grading, bridging, and tieing shall have been finished and completed."

Other provisions are made in said second supplemental indenture, which may be seen by a reference to said Exhibit C.

19. Your petitioner further avows that three millions in amount of bonds accrued by the said mortgage herein mention' were issued and delivered to the said trustees, and by said trustees certified as by said deed of trust required, and said railroad has been constructed as follows: Commencing at a point near Pine Hill Cemetery, about four miles from the levee at Davenport; thence in a north'ly direction to the
23 town of Fayette, in the county of Fayette, a distance of about one hundred and twenty-four miles. Also, what is known as the branch called the Maquoketa branch, commencing at Eldridge, in the county of Scott and State of Iowa, and running northerly to Maquoketa, in the county of Jackson and State aforesaid; and further, the grading is mostly completed from Fayette to the town of Cresco, county of Howard, State of Iowa, and that the bridging and tieing of the said road, the distance being about forty-five miles, has been partely completed.

20. Your petitioner avers that said defendant corporation, on the first

day of January, A. D. 1874, and ever since, has neglected to pay the interest on said three million four hundred and fifty thousand dollars in amount of bonds, *at* any part thereof, and more than six months has elapsed since their failure to do so, and by reason thereof the whole of the principal of said bonds has become due and payable, and said
24 petitioner claims the right conferred on them of making the payment thereof by the sale of said mortgaged property.

21. Your petitioner avers that said defendants ought to pay what is due on said bonds for principal and interest, or otherwise release their equity of redemption in the premises, but they refuse so to do.

22. Your petitioner is advised that about four hundred and fifty thousand dollars in amount of bonds were afterwards issued with a like certificate.

23. Your petitioner avers that the following parties, the Delaware Railway Construction Company, Western Car Company, Abraham Bibby, Andrew Mundy, Benjamin Burch, Burch, Lakin & Co.; Benjamin Burch, surviving partner of B. & H. M. Burch; Charles M. Lockwood, Richard Moore, H. S. Babcock, M. L. Rogers, First National Bank of Davenport, Hiram Price, David Stevens, Richard Elwood, John Hornby, Lewis Bell, C. T. Peet, Leroy Jackson, S. Denton & Co.,
25 Elizor Davis, J. H. Leach, E. Hoag, claim some judgment or other lien on said property, or some part of said mortgaged property,
26 and some of them claim a lien subsequent and some prior to that of the plaintiff by virtue of said mortgage as amended, but your petitioner avers that his said mortgage lien is prior to any of them.

He prays that said defendants and each of them may answer and fully disclose what judgment or lien on said premises or any part thereof they have.

24. Your petitioner avers that said judgments and liens are not such as can be enforced against the bondholders, because the sale and removal of the work done and materials furnished by said parties are impossible from the nature of the work done, without the total destruction of the property annexed thereto, which is not included in or a part of the work done by the said plaintiffs in said judgments, and said judgments and sales were not rendered and made as required by the statu'es of Iowa.

27 25. That said William Dennison is nominally a party defendant to some of said judgments, but was served only by publication, and is litigating the said judgments in the Iowa courts as he is authorized by law.

26. That the said William Dennison is not now performing the duties of a trustee under said mortgage, having been removed.

27. That said judgment creditors may claim a right to redeem said mortgaged premises, or a sale thereof.

28. That said Railway Construction Company, by an agreement (which is hereto annexed, marked "Exhibit I"), agreed with said bondholders that the subscriptions along the line of said road would grade, bridge, and tie the same ready for iron, and that the subscriptions were not sufficient; that said Davenport Railway Construction Company would do it, and said Railway Construction Company is bound to pay all of said claims if paid.

28 29. That said Railway Construction Company also agreed by contract (hereto annexed and marked "Exhibit F") with said Davenport and S't Paul Railroad Company, dated July, A. D. 1872, to furnish equipments for the local traffic of said Davenport and S't Paul Railroad Company.

30. That said construction company, instead of furnishing said equipments as a part of the property of said Davenport and S't Paul Railroad Company and said Railway Construction Company and said Davenport and S't Paul Railroad Company, leased ninety (90) cars of said Western Car Company, at a rental of twenty dollars per car per month, and have paid out of the income of said railroad the sum of twenty-four thousand dollars for rent of said cars, when it was the contract and duty of said construction company to furnish said cars and more cars as a part of the equipment of said road. A copy of said lease is hereto attached, marked "Exhibit G."

29 32. That said Davenport Railway Construction Company, on the 12th day of May, A. D. 1871, made a contract, hereto annexed, marked "Exhibit H," with said Davenport and S't Paul Railway Company to construct and build station-houses for said railroad, and they stipulated for an issue of stock which gave them the control of said railroad corporation.

33. That the same persons own a majority of the stock, and control and govern the Davenport and S't Paul Railroad Company.

34. The Davenport Railway Construction Company and the Western Car Company knew the construction company were bound to furnish said cars; and said contract of lease, instead of purchase, was a fraud on the creditors of the Davenport and S't Paul Railroad Company, and said construction company is bound to pay for the cost price of said cars, and to refund and return to the plaintiff, as trustee, all the

30 money paid for the use thereof; that said Railway Construction Company has for more than two years past, without any contract or bargain, but of their own will and power, taken possession of, and used and operated, the said Davenport and S't Paul Railroad, and has recovered the income thereof, and appropriated it to its own use.

35. That it has neglected to pay the operatives it employed, and used the income for other purposes.

36. That it has totally neglected to apply the surplus income, above operating expenses, to the payment of the interest on said bonds, in violation of and with the full knowledge of the terms of said mortgage.

37. That the said construction company sold the said four hundred and fifty thousand in amount of bonds, and violated the conditions of the said mortgage, with a full knowledge thereof.

38. That the said suit of Moses Dewitt Loomis in this court is a

31 collusive suit of the said railway and construction company; that it was brought by the members of the construction company, or some of them, in the name of Loomis, who is a clerk of Andrew Carniegie, a member of said construction company.

39. That Loomis is not the bona-fide owner of said $5,000 of bonds, but they belong to Carniegie, or some member of the construction company, who has purchased them and delivered them to Loomis to bring his suit.

40. That said Dennison voluntarily appeared to said bill, and assented to said French being appointed receiver, who was at the time of the said appointment president of the said railroad company and secretary of the construction company and a stockholder therein, and sought and obtained said appointment knowing he was not a proper person to be appointed.

32 41. That Dennison has been removed as a trustee by said bondholders, as they were authorized to do by said deed of trust, and he has no authority further to act as such.

42. The acts of said Dennison, and other things herein specified, are contrary to equity, and tend to the plaintiffs' injury. To the end, therefore

that the defendants may, if they can, show cause why your petitioners should not have the relief herein prayed, and may full answer make to all the allegations of this bill, but not under oath, which is waived, your petitioner prays that a writ of subpœna issue from this court directed to said defendants, to answer by a day therein named, that an account may be taken of what is doing and owing to the plaintiff as trustee for said bondholders under said deed of trust or mortgage for principal and interest.

That said defendants may be decreed what shall be found due and owing on said account, together with costs of foreclosure, by a
33 short day to be appointed by the court that purpose, your petitioner being ready and willing and offering at said appointed time to reconvey of said mortgaged premises unto said defendants as this court may direct. And in 'fault of such payment that said defendants, and all persons claiming under them, be barred and foreclosed of equity of redemption, and said mortgaged property be sold by a special master, to be appointed by this court, to satisfy said debt, interests, and costs.

That said ninety cars may be adjudged to be the property of said Davenport and S't Paul Railroad Company, and sold as a part of the property included in said mortgage.

That said trustees may be decreed to have a prior lien on said roadbed and ties, etc., in Delaware and Fayette Counties, over said Delaware Railway Construction Company, said Sarah E. Burch, administratrix of H. M. Burch, and Burch, Laken & Co., or if they have any lien, said construction company may be decreed to pay it.

34 That said Davenport Railway Construction Company may be decreed to account for the income of said railroad company while in its possession.

That it may be adjudged to pay to the plaintiff the sums paid for rent of said cars, and all other income of said railroad misappropriated by it.

That it may be decreed to pay the cost of the suit of Loomis up to the time of the appointment of John E. Henry as receiver.

That your petitioner may be decreed to have a prior lien on said railroad, appurtenances, and rights to said Davenport and S't Paul Railroad Company, the Davenport Railway Construction Company, the Delaware Construction Company, William Dennison, Ambrose Bibby, Andrew Mundy, Benjamin Burch (surviving partner of B. & H. M. Burch), John L. Davies & Son, Beiderbeck & Miller, W. C. Wadsworth & Co., Frances W. French, R. Krause, Childs & Co., L. Lowenstein & Co., Lowell, Corbett & Co., M. Foley, Benjamin Burch, J. H. Lakin,
35 W'm Burch (composing the firm of Burch, Lakin & Co.), Robert Vantyne and Jason L. Payne, Sarah E. Burch, (administratrix of the estate of H. M. Burch, deceased,) Charles M. Lockwood, Richard Moore, H. S. Babcock, and Geo. H. French, his assignee, M. L. Rogers, First National Bank of Davenport, Hiram Price, Daniel Stevens, Richard Ellwood, John Hornby, Lewis Beel, C. S. Peet, Lucius Howard, Brown & Martin, the Delaware Railway Construction Company, Leroy Jackson, S. Denton & Co., Westfall & Heines, Elizor Davis, J. H. Leach, E. Hoag, L. S. Davies, (surviving partner of John L. Davies & Son), and the Western Car Company.

Your petitioner prays for such other and further relief as his case may require.

GRANT & SMITH,
Attorneys for Plaintiffs.

JAMES GRANT,
Of Counsel.

36 *Exhibits.*

EXHIBIT A.

We, the undersigned, holders of the first-mortgage bonds of the Davenport and S't Paul Railroad Company, issued under and secured by said company's mortgage, dated first of July, 1871 (one thousand eight hundred and seventy-one), to John Edgar Thomson and William Dennison, trustees, to the amount set opposite our respective signatures hereto, the same being a majority in interest of the total amount of said bonds now outstanding, do hereby appoint M'r Louis H. Meyer, of New York City, trustee under the said mortgage in place of John Edgar Thomson, deceased.

In witness whereof we have hereunto set our respective hands and seals this 21st day of December, 1874.

GEBE SULZBUCH, holder of $494,000—451 @ 455, 476 @ 485, 536 @ 540, 1155 @ 1164, 1276 @ 1300, 1321 @ 1340, 1491 @ 1497, 1499, 1500,
1532, 1534, 1552 @ 1571, 1576, 1578 @ 1581, 1586, 1588, 1599, 1602
37 @ 1613, 1614 @ 1616, 1618, 1619, 1622, 1623, 1632 @ 1638, 1643,
1644, 1646, 1647, 1649, 1650, 1711, 1714, 1719, 1720, 1725, 1727, 1730, 1732, 1733, 1735 @ 1738, 1740, 1742, 1744, 1746, 1768, 1773 @ 1778, 1786 @ 1789, 1798, 2031 @ 2350.

SELIGMAN STELLHEIMER, holder of $20,000—311 @ 320, 1388 @ 1392, 1395 @ 1398, 1189.

GEORGE VON WISWEILLER, holder of $25,000—1251 @ 275.

D. & J. DE NEUFFVILLE, holders of $30,000—951 @ 970, 1111 @ 1115, 1128, 1129, 1132, 1138, 1139.

J. U. TRIER & CO., holders of $20,000—1368 @ 1387.

J. L. FINCK, holders of $10,000—1341 @ 1350.

FRANKFURTER WECHSTER BANK, holder of $25,000—1165 @ 1178, 1301 @ 1310, 1400.

EMIL LUDENBURG, holder of $40,000—No. 971, 80, 1801, 30.

MITTELD, CREDIT BANK, fel. Frankfort, holder of $335,000—No. 101, 125, 139, 150, 321, 450, 1739, 1748, 1749, 1769, 1772, 126, 138, 26, 50, 1, 25, 201, 300.

BARUCH BONN, holder of $40,000—No. 661 @ 700.

38 DEUTSCHE, VEREIN BANK, holder of $100,000—No. 551, 600, 1001, 50.

JOHANN DAVID SAVIERLANDER, holder of $5,000—No. 1150, 1154.

B. H. GOLDSCHMIDT, holder of $40,000—No. 486 @ 520, 521 @ 25.

W. F. IDEGER, holder of $35,000—No. 181 @ 190, 57 @ 65, 76 @ 91.

M. A. GRINEBAIRM & BALLIN, holders of $20,000—No. 1351, 1367, 1393, 94, 1399.

MURITZ B. GOLDSCHMIDT, holder of $25,000—656, 660, 981, 1000.

A. MAY, JUNIOR, holder of $200,000—601, 650, 701, 750, 1051, 1100, 1951, 2000.

LUZAR SPEYER ELLISSEN, holder of $50,000—No. 1201 @ 1250.

KUHN & CO., holders of $30,000—No. 651, 55, 456, 75, 1639, 42, 1645.

JOHANN JACOB KLOTZ, holder of $25,000—No. 51 leib. 56, 66 leib. 75, 92 leib. 100.

R. SULZBUCH, holder of $250,000—No. 751 @ 950, 2351, 2400.

FILEDLEDER BUYER HUNDELSBANK, holder of $20,000—No. 1414, 23, 1188, 79.

Declaration of anedame.

(Translation.)

Done in Mannheim, January 5, 1875, before me, Theodore Toef-
39 zer, notary public of the Gr'd Duchy of Baden, of this city, and appointed for the 5th notariel district, in district court of Mannheim, and before the following to me known witnesses: Michael Hirstell & Benehard Jirgen, both particuliers of this city, both of whom, as well as the parties below named, have been by me informed of § 48 and 49 of the notariel law of May 28, 1864, then have appeared the banker, M'r Wilhelne Koester, of this city, partner of the banking-house Koester & Co., here, and designated as such in the register *as* commerce, and known to me, likewise fully authorized to represent the named banking-house, who declared to me as notary, and to the two witnesses, that he, for his firm, who holds ten (10) first-mortgage bonds of the Davenport and S't Paul Railroad Co., viz., the numbers 1516, 1528, 1529, 1530, 1531, 1533, 1541, 1583, 1601, and 1648 of 1,000 dollars each, and altogether 10,000, fully accedes to the document already signed by the Frankfort banking firms mentioned before, so that this document
40 be deemed validly signed by Koester & Co., and that he declares and asserts, instead of making oath, that his firm own the above-named bonds of which hereby attestation, which by me as notary was read to M'r Wilhelm Koester, in presence of witness agreed to by him, and signed by him, the witness, and by me as notary.

(Signed) WILHELM KOESTER. [SEAL.]
" MICHAEL KRISTELL.
" BERNHARD JIRGEN.
" THEODORE TOEFZER, *Notary.*

Con. Cer. Taken.

Declaration of anedame.

(Translation.)

Done in Stuttgart, January 7, 1875, before me, the court notary assistant, G. Stierle, as representative of the officially detained city court notary, Ritter, for district 1, of the royal capitol and residence at Stuttgart, and before the witnesses, personally to me known, W. Scholl, notary assistant, and C. Berger, notary's clerk, here, with whom
41 no obstacle to act as witnesses obtain, appeared to-day M'r Alexander Pflaum, partner of the banking-house of Pflaum & Co. here, who is registered as such in the commercial register, is authorized to sign for the firm, and is personally known to me. He declared before us that he, for his firm, who hold 10 first mortgage bonds of the Davenport and S't Paul Railroad Company, numbered 1511, 1512, 1518, 1519, 1520, 1522, 1524, 1526, 1527, 1573, which he shows to us, of 1,000 dollars each, fully acceded to the contents of the document signed by the Frankfort firms December 17, 1874, so that it shall be deemed as validly signed by Pflaum & Co., and that he asserts in lieu of oath that his firm is the owner of 10 bonds.

(After perusal, signed)

PFLAUM & CO. [SEAL.]

Upon which I, the representative of the notary, have in presence of

the witnesses, read the above to the component, and after approval and signature by him, have myself, with the witnesses, signed it and put my notariel seal to it.

(Signed) G. STIERLE,
Court Not. Ass't.

42 (Signed) W'M SCHOLL.
Not. Ass't.

" CARL BERGER,
Not. Clk.

Con's cer.

No. 2378.

(Translation.)

Before M'r de Coquerel, notary at Bruxelles, have appeared Y Monsieur Jacques Croera Oppenheim, banker of Bruxelles, rue Royal No. 6, in his personal name, for himself and Isaac Stern, banker, of same place, rue Royal No. 22, director of the Bank of Brussels, limited company, constituted by act received by the undersigned notary, November 13, 1871, and acting in this quality by virtue of article 24 of the statutes for and in the name of such bank who have declared to us, M'r Jaques Croera Oppenheim, that he is owner of 75 obligations (bonds), numbering 1906 to 1950 and 2001 to 2030, and M'r Stern, for the bank of Brussels; that this bank is likewise owner of 75 bonds, numbering 1831 to 1905, all of the Davenport and S't Paul Railroad Company, issued
43 by this company, each piece being for 1,000 dollars, and representing at exchange of 5 francs five thousand francs. That these bonds are guaranteed by first mortgage, given July, 1871, in favor of Mess'rs John Edgar Thomson and William Dennison as trustees; that by decease of said M'r Thomson, he must be replaced.

Consequently the undersigned, after having taken due notice of certain act, dated December, 1874, and made by the majority of the aforesaid company's bondholders, declare M'r Lewis H. Meyer, of the city of New York, trustee, in place of M'r John Edgar Thomson, deceased, to act in his place and exercise all acts and rights attached to this position.

All of which is hereby attested.

Done and passed in city of Brussels, year 1875, in presence of Vierre Joseph Benquet and Jean Jordans, of whom the former lives in Brussels, and the latter in Ixelles, as witnesses.

After reading the above to the undersigned they have *have* been signed with the witnesses and notary.

44 (Signed) P. J. BENQUET.
" J. JORDANS.
" G. DE COGUEREL.
(Signed) JACQUES CROERA OPPENHEIM,
" *Bangue de Bruxelles.*
" L'Adr Directeur,
" M. STERN.

Registered in Brussels January 14, 1875.
Certified, etc.

I, Lewis H. Meyer, of the city of New York, do hereby accept my appointment as trustee in place of John Edgar Thomson, deceased, under the mortgage or deed of trust, dated July first, eighteen hundred and

seventy-one, made by the Davenport and S't Paul Railroad Company to John Edgar Thompson and William Dennison, as trustees, which appointment of me as such succeeding trustee was duly made by the holders of a majority in interest of the total amount of bonds outstanding under the said mortgage by concurrent instruments in writing executed by them, bearing date December 21, 1874, and January 5, 7, and 14, 1875.

45 In witness whereof I have hereunto set my hand and seal, at the city of New York, the twelfth day of March, eighteen hundred and seventy-five.

L. H. MEYER. [L. S.]

In the presence of—
CHR. F. SOUTHMAYD.

EXHIBIT B.

This indenture, made on the first day of July, in the year of our Lord one thousand eight hundred and seventy-one, between the Davenport & S't Paul Railroad Company, a corporation organized and formed by and under the laws of the State of Iowa, party of the first part, and John Edgar Thomson, of the city of Philadelphia, in the State of Pennsylvania, and William Dennison, of the city of Columbus, in the State of Ohio, party of the second part, witnesseth:

That whereas the said party of the first part is authorized by to borrow all such sum or sums of money as shall be necessary for the construction, equipments, and maintenance of its road, and to convey
46 all its corporate property, franchises, and effects, by mortgages and deeds of trust, to secure the payment of all such indebtedness as shall be so contracted by it:

And whereas the said party of the first part has, by a resolution of its board of directors, duly authorized and empowered its president and secretary to execute, and in its corporate name to issue bonds, to be designated first-mortgage bonds, to be secured by a mortgage or deed of trust, in such form and with such covenants and conditions as the said president should deem most desirable for the best interests of the said corporation, for the purpose of securing the necessary means to iron and equip its said railroad, and a sinking fund of $40,000 per annum, to begin July 1st, 1875, the said bonds to be issued at a rate not to exceed the sum of $20,000 for each mile of said railroad, upon which the work of grading, bridging, and tieing shall have been completed, and to be issued from time to time as the said work shall progress;

47 And whereas the said resolution authorized the said president to designate the trustees, and John Edgar Thomson, of Pennsylvania, and William Dennison, of Ohio, having been designated by him as such trustees, to whom the said property of the said corporation should be conveyed to secure the payment of the principal and interest of the said bonds so to be issued, to incorporate in such mortgage or deed of trust as should be executed for the purpose aforesaid such covenants and conditions as should be deemed by him necessary and proper to promote and sustain public *public* confidence in the security of the said bonds and fix the rate of interest which the said bonds should bear;

And whereas the said president has determined to issue the said bonds in the sums of $1,000 each, payable at the agency of the said railroad company, in the city of New York, on the first day of July,
48 in the year of our Lord one thousand nine hundred and eleven,

bearing interest at the rate of seven per centum per annum, payable semi-annually in New York, London, or Frankfort, at suitable agencies, to be selected in said cities by said railroad company, and also make both the principal and interest of the said bonds, payable in gold coin in the United States of America, of or equal to the present standard, and to have the said bonds duly prepared and deposited with the said parties of the second part, to be delivered over by them to the treasurer of the said company, on the order of the president, in an amount from time to time not to exceed the sum of $20,000 for each mile of said road upon which the work of grading, bridging, and tieing shall shall have been completed, which said bonds are in the form following, that is to say:

FORM OF BOND.

$1,000.] Whole issue, $6,000,000. [No. .

UNITED STATES OF AMERICA, STATE OF IOWA.

Seven per cent. first-mortgage sinking fund bond.

49 The Davenport & S't Paul Railroad Company.

The Davenport & S't Paul Railroad, a corporation existing under and by authority of the laws of the State of Iowa, promises to pay to John Edgar Thomson, or bearer, on the first day of July, one thousand nine hundred and eleven, in the city of New York, one thousand dollars in United States gold coin, of or equal to the present standard, with interest thereon at seven per cent. per annum, free of United States taxes, semi-annually, on the first days of January and July, in like gold coin, upon presentation and surrender of the annexed coupons therefor; such interest to be paid either in New York, London, or Frankfort, at suitable agencies to be hereafter named in each of those cities, at the option of the holders as specified in the coupons.

In case of default in payment of such interest when due, and continuance of such default for sixty after demand, the pricipal of this bond will be subject to become due and payable, upon the
50 condition provided in the trust deed hereinafter mentioned.

This bond is one of six thousand bonds for one thousand dollars each, of like tenor and date, numbered from one to six thousand, inclusive, to be issued on the said railroad at the rate of twenty thousand dollars per mile, as from time to time the road shall progress from the city of Davenport in the State of Iowa, to the city of S't Paul in the State of Minnesota, it being expressly understood that said issue of bonds shall not exceed the amount named per mile, and shall only be issued as the road shall progress.

The owner of this bond shall have the right at any time to convert it into the stock of the company at par.

The payment of this bond is secured by a mortgage or deed of trust of the company on its road-bed, depot-grounds, and buildings, rolling-stock, machinery, franchises, and all its property of every kind, as also net incomes, acquired and to be acquired to John Edgar
51 Thomson, of Pennsylvania, and William Dennison, of Ohio, trustees, dated July 18th, 1871, and duly recorded in all the counties through which the road is being constructed. This bond is, moreover, secured by a sinking fund of $40,000 per annum, to begin July 1st, 1875,

to be set apart and increased annually for the redemption of the said bonds.

This bond is transferable by delivery, but it may be registered as to its ownership on a registry to be kept by the company.

After a registry of ownership certified hereon by the transfer agent of the company, no transfer shall be valid unless made on the books of the company, except if the last transfer be to bearer, transferability by delivery shall be restored; subject to successive registration and transfer to bearer as aforesaid, at the option of any lawful holder.

This bond is further authenticated by the endorsement of said trustees hereon.

52 In witness whereof the said company has caused the foregoing to be attested on its behalf by the signature of its president and secretary, and its corporate seal to be affixed hereto at Davenport, Iowa, this first day of July, A. D. 1871.

President.

Secretary.

53 *Form of coupon.*

£7 5s. 10d. $35.00. Fl. 87.30.

The Davenport & S't Paul Railroad Company will pay to the bearer, as he may elect in the city of New York, thirty-five dollars United States gold coin, or in London seven pounds five shillings and ten pence sterling, or in Frankfort, O. M., eighty-seven florins and thirty krutzers, free of United States taxes, on the first day of January, 18 , being six months' interest on bond No .

Secretary.

Form of trustees' certificate.

The undersigned hereby certify that this bond is one of the series of bonds described in and secured by the within-mentioned deed of trust or mortgage, bearing date the first day of July, A. D. 1871.

Trustees.

54 And to each of the said bonds there is to be affixed the requisite United States internal revenue stamp.

And whereas the said board of directors of the Davenport and S't Paul Railroad Company have formally passed and adopted a resolution authorizing the president and secretary of the said company to execute in its corporate name, and to affix thereto its corporate seal, a deed of trust, to the said John Edgar Thompson and William Dennison, to secure the payment of the principal and interest of the said bonds, as the same shall become due according to the tenor and effect thereof.

Now, therefore, this indenture witnesseth: That the said, The Davenport and S't Paul Railroad Company, for and in consideration of the premises and of the sum of one dollar *to* this day paid by said par-

55 ties of the second part, the receipt whereof is hereby acknowledged, and for the purpose of securing the payment of the principal and interest of the said bonds as the same shall become due and

payable, according to the tenor and effect thereof and of the said coupons thereto severally annexed, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, convey, release and confirm unto the said parties of the second part, and to their successor or successors, as trustees, all and singular, the road bed and superstructure of the said The Davenport and S't Paul Railroad, including all branc'ees, side tracks, additions, turnouts, rights of way, depot grounds, coal-lands, timber-lands, and other lands, now owned, and that may hereafter be acquired by said party of the first part, all *all* depots, station-houses, engine-houses, car-houses, water-tanks, freight-houses,
56 grain-houses, grain-elevators, woodhouses, coal houses, car-shops, and machine shops, and all other buildings whatsoever, now erected or hereafter to be erected.

Also all kinds of machinery and tools now held and owned, or hereafter to be acquired by said party of the first part, for use in connection with the said railroad, including all locomotives, tenders, cars, or other rolling-stock or equipment, and all tools, implements, fuel, and materials of every kind used or procured for use in the constructing, operating, repairing, or replacing any part or parcel of the said railroad or any part of its appurtenances; also, all property and franchise connected with or relating to the said railroad, or any part of its business, in anywise whatsoever, which are now held or may be hereafter in any way acquired by the said party of the first part; and also, all rights,
57 claims, and benefits in or to any lease, contract, or agreement now made or which may be hereafter made by the said first party with any person or persons whomsoever.

Together with all and singular the tenements and appurtenances thereto belonging or in anywise appertaining, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereto, and also all the estate, right, title, and interest whatsoever, as well at law as in equity, of the said party of the first part, of, in, to, or out of the same, and every part and parcel thereof.

To have and to hold the premises above particularly described and set forth, unto the said parties of the second part and to their successor or successors, as trustee or trustees, in trust nevertheless, for the uses and purposes hereinafter set forth and expressed, and upon the
58 terms, covenants, agreements, and conditions following, that is to say:

First. The actual possession, occupation, and management, and the use and control of the said railroad, and of all the appurtenances thereof shall be, remain, and lie with the said party of the first part, without molestation or interference by or from the parties of the second part or their successor or successors in the said trust, until default be made in the payment of the principal of the said bonds, or some of them, or until default be made in respect to something herein required to be done by the said party of the first part, and until such default be made as aforesaid, the said party of the first part shall take and use all the earnings, incomes, profits, rents, tolls, and issues of the premises,
59 and dispose of the same in any manner not inconsistent with the terms of this instrument.

Second. The bonds which shall be executed and issued by the said party of the first part under the provisions of this instrument and therein recited shall be delivered to the said parties of the second part to be countersigned by them as trustees hereunto, and no bond shall be valid or binding or be benefited by the provisions hereof unless the shall be countersigned by the said parties of the second part or their successors

in the said trust, by signing their names in their own proper handwriting, respectively, to the certificate to each of the said bonds appended and made a part thereof, and the said parties of the second shall not at any time countersign or permit to be issued any bonds in ex-
60 cess of the rate of twenty thousand dollars for each mile of the said road upon which the work of grading, bridging, and tieing shall have been finished and completed.

Third. In case default shall be made in the payment of any of the interest-coupons annexed to any of the foregoing bonds, according to the tenor thereof, and if such default shall continue for the period of six months, it shall be lawful for the party of the second part, by their duly authorized officer, agent, or attorney, upon the request of the person or persons owning and holding one fourth in amount of such delinquent interest-coupons, made known to the said parties of the second part in writing, signed by the person or persons therein interested or by
61 his or their lawfully constituted agents or attorney, to enter into and upon all and singular the premises hereby conveyed, and each and every part thereof, and to have, hold, and use the same under such superintendent, manager, receiver, or agent as the parties of the second part may select to conduct the business of the said railroad and its branches, and to exercise the franchises pertaining thereto, and to make, from time to time, all repairs, replacements, additions, and improvements thereto as may seem judicious, and to collect all earnings, dues, freights, incomes, rents, tolls, issues, and profits of the same and of every part thereof, and after deducting the necessary expenses of operating the said railroad and of conducting the business thereof, and of all the said repairs, replacements, additions, and improve-
62 ments, and of all taxes, assessments, or liens upon the said premises, or any part thereof, as well as a just compensation for their or his own services, to apply the moneys arising as aforesaid to the payment of interest-coupons in the order in which they shall have respectively become due, and after paying all such past-due coupons and all installments or balances thereof, to apply the remainder of said moneys to the satisfaction of the principal of the aforesaid bonds which may at that time be due and unpaid, rateably, and without discrimination or preference.

Fourth. In case default shall be made as aforesaid and shall continue as aforesaid, it shall also be lawful for the said parties of the second part, after entry as aforesaid, or without entry, on the request of
63 the person or persons owning and holding the majority in amount of the said delinquency, expressed in writing to the said parties of the second part, to sell and dispose of the premises hereby conveyed, at public auction, in the city of New York, or at such place as the parties of the second part may designate, having first given notice of the time and place of such sale, by advertisements published not less than once a week for six months in one or more newspapers published in each of the cities of New York and Davenport, and to adjourn the said sale from time to time by announcement at the time and place advertised, without other notice, and to make and deliver unto the purchaser or purchasers thereof good and sufficient deeds, conveyance, or other assurance in the law to vest in the said purchaser or purchasers of
64 the said premises an absolute estate in the said premises in fee-simple, which sale so made as aforesaid shall be a perpetual lien, both in law and in equity, against the said party of the first part, and all and every other person or persons claiming or claim the same by, from, through or under the said party of the first part, and after deducting

from the proceeds of such sale just allowance for all the expenses thereof, including a reasonable amount for attorney's fees and any other necessary expense incurred by the said trustees in managing the business of the said railroad while in possession, or in arranging the sale thereof, to apply the remaining proceeds to the payment of the principal of such of the aforesaid bonds as may be at that time unpaid,
65 whether or not the same shall have previously become due, and the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, but rateably to the aggregate amount of such unpaid principal and such accrued and unpaid interest, in United States gold coin at par, and if after satisfaction thereof as aforesaid a surplus of the said proceeds shall remain, to pay the same over to the party of the first part.

Fifth. At any sale of the aforesaid property, or any part thereof, whether made under the power her'in granted or by judiciary authority, the parties of the second part may bid for and purchase the property so sold, or any part thereof, for and on behalf of the holders of the bonds hereby secured and then outstanding, in proportion
66 to the respective interests of such bondholders.

Sixth. In case default shall be made in payment of any half-year's interest on any of the aforesaid bonds, according to the tenor and effect of the coupons thereto annexed, and if such default shall continue for the period of six months after such coupons shall have become due and payment thereof shall have been demanded, then the principal of all the bonds secured hereby, if a majority in interest of all the holders of the said bonds shall so direct in writing before the interest so in arrears shall have been paid, shall be declared by the said parties of the second part to be immediately due and payable, and thereupon
67 the same shall become due and payable, anything contained in the said bond or her'in to the contrary notwithstanding.

Seventh. The said party of the first part shall from time to time, and as often as thereunto requested by the said trustees or their successor or successors in the said trust, execute, acknowledge, and deliver all such further deeds, conveyances, and assurances as shall be necessary for the better assu'ing unto the trustees aforesaid, or their successors, the said railroad and equipments, rights, and equities hereinbefore mentioned, or intended so to be, and all other property and things whatsoever which may be hereafter acquired for use in connection with the same or any part thereof, and all franchises now held, or here-
68 after to be acquired, including the franchise to be a corporation.

Eighth. The said trustees and their successors shall have full power, in their discretion, upon the written request of the party of the first part, to convey by way of release or otherwise to the person or persons designated by the said party of the first part, any lands acquired or held for the purpose of stations, depots, shops, or other buildings, and shall also have power to convey as aforesaid, on like request, any land or property which, in the judgment of the said trustees for the time being, shall not be necessary for use in connection with the said railroad, or which may have been held for a supply of fuel, gravel, or other material, and also to convey as aforesaid, on like request, any land
69 not occupied by the track which may become disused by reason of a change of the location of any station-house, depot, shop, or building connected with the said railroad, and such lands occupied by the track and adjacent to such station-house, depot, shop, or other building as the said party of the first part may deem it expedient to disuse or abandon by reason of such change, and to consent to any such change

and to such other changes in the location of the track or depots, or other buildings, as in their judgment shall have become expedient, and to make and deliver the conveyances necessary to carry the same into effect; but any land which may be acquired for permanent use, in substitution for any so released, shall be conveyed to the said trustees upon the
70 trusts of these presents, and the said trustees for the time being shall also have full power to allow the said party of the first part from time to time to dispose of, according to their discretion, such portions of the equipments, machinery, and implements at any time held or acquired for the use of the said railroad as may have become unfit for use, replacing the same by new, which shall be conveyed to the said trustees or otherwise made subject to the operation of these presents.

Ninth. It is hereby declared and agreed that it shall be the duty of the trustees aforesaid and their successors to exercise the power of entry hereby granted, or the power of sale hereby granted, or both, or to take the appropriate proceedings in equity or at law to enforce
71 the rights of the holders of the said bonds under these presents, upon the written request her'inbefore mentioned, when the person or persons making the same shall furnish to the said trustees a proper indemnification against the cost and expenses to be incurred by them therein.

Tenth. It is mutually understood and agreed by and between the parties hereto that the word trustees as used and employed in these presents shall be construed to mean the trustees for the time being, and whenever any vacancy occurs by the death, resignation, disability or refusal to act of either of the said persons named herein as such trustees, or any of their successors in the said trust, at any time, the board
72 of directors, by a majority thereof, of the said The Davenport and S't Paul Railroad Company shall have the right to appoint a successor to fill such vacancy, such appointment to be attested in writing by the signatures of the president and secretary, and by the corporate seal of the said corporation; and the written acceptance of such appointment shall immediately and by force of such vote of the said board of directors, and the said acceptance, vest all authority, right, and power in such new trustee or trustees, as fully and completely in all respects as if he or they had been her'in named as party or parties of the second part.

But if at any time such vacancy should continue for a period of thirty days, by reason of the neglect or refusal of the said board of di-
73 rectors to act in the premises, or for any good cause therefor shown any court of competent jurisdiction within the State of Iowa, in any of the counties through which the said road may run, shall have power to appoint such trustees, anything in the said bonds or in these presents to the contrary thereof notwithstanding. In all cases in which the trustees may be required to act, they are hereby invested with full powers of arbitrament and of compromise and of appointing agents and attorneys to act in their behalf.

Eleventh. The said party of the first part, in consideration of the premises, and of the said sum of one dollar duly paid as aforesaid, hereby further covenants and agrees to and with the said parties of the second part and their successor or successors in the said trust to have an office
74 or agency in the city of New York for the payment of the principal, and an agency in each of the cities of New York, London, and Frankfort, for the payment of the interest of the bonds hereby secured, as the same shall respectively become due and payable.

Twelfth. The said party of the first part, for the considerations afore-

said, hereby further covenants and agrees to and with the said parties of the second part, and their successor or successors, that the proceeds of the said bonds shall at all times be faithfully applied to the uses and purposes hereinbefore specified, and to no other use or purpose whatsoever.

Thirteenth. The said party of the first part agrees and covenants with the party of the second part, and their successors, that it will
75 create a sinking fund for the redemption of the whole amount of the bonds hereby secured and will therefor set apart and deposit with a sinking-fund commissioner or commissioners, to be appointed by the party of the first part, on the first day of July, 1875, the sum of $40,000, and will, on the first day of July of each and every year thereafter, deposit with said commissioner or commissioners the like sum of $40,000, such annual deposits to be continually invested and compounded with the interest thereof for the increase of the said sinking fund until the maturity of said bonds. Such sinking-fund moneys shall from time to time, under the orders of the party of the first part, be invested in the purchase of the bonds hereby secured, or such other bonds as shall be designated by the party of the first part, with
76 the consent of the said parties of the second part; and the money accruing on any and all of such investments for interest, as fast as the same shall be received, shall be added and paid into said sinking fund, and compounded therein continually, and reinvested in like manner with the other moneys of said fund, and the same shall be used solely to reduce and eventually pay off said bonds herein and hereby secured; that the board of directors of said railroad company, party of the first part, shall have entire control over the management of said sinking fund and every person in charge of or connected with the same, and shall from time to time direct in what bonds or securities it shall he invested, and at what price or rates, and how it shall be
77 kept, and the manner of keeping the accounts thereof, and shall require ample security to be given to them by any person in charge of its moneys, or its securities or bonds, for its safe keeping: Provided, That no securities shall be purchased for said fund other than the bonds secured hereby, without the consent of the parties of the second part as aforesaid.

Fourteenth. And the said party of the first part, for the considerations aforesaid, hereby further covenants and agrees to and with the said parties of the second part that it, the said party of the first part, shall and will at all times hereafter observe, perform, and keep all and every the conditions, covenants, and provisions herein contained to be by the said party of the first part performed and kept.

78 Fifteenth. If the party of the first part shall well and truly pay the sums of money herein required to be paid by the said party, and all interest thereon, and at the times and in the manner hereinbefore specified, and shall well and truly keep and perform all the things herein required to be kept and performed by the said party of the first part, according to the true intent and meaning of these presents, then and in that case the estate, right, title, and interest of the said parties of the second part, and of their successors in the trust hereby created, shall cease, determine, and become absolutely void; otherwise to be and remain in full force and virtue.

Sixteenth. It is mutually agreed by and between the parties
79 hereto, as a condition on which the parties of the second part have assented to these presents, that said trustees shall be responsible for gross negligence or wilful default only; that they shall

not be in any manner responsible for any default or misconduct of each other; that they shall not be held obliged by the terms of this instrument to demand and take actual possession of and operate the road and premises hereby granted and demised, except at their own option; that said trustees, or their successors in office, shall not be required to act in the execution of any of the other trusts hereby created, unless the parties requesting their action shall give them sufficient indemnity against the charges and expenses to be incurred; that the said trustees or
80 trustee shall be entitled to receive a reasonable allowance for any service which may be rendered by them or him in the execution and enforcement of the trusts hereby created, and for all expenses, counsel fees, and other necessary charges to which they or he may be subject; that either of said trustees may resign and discharge himself of the trust created by these presents, by notice in writing to the party of the first part three months before such resignation shall take effect, or such shorter time as they may accept as adequate notice.

In testimony whereof the said party of the first part has caused its corporate seal to be hereto affixed, and these presents to be attested by the signatures of its president and secretary, and the parties of the second part, to testify their acceptance of the said trusts, have
81 hereunto subscribed their names on the day and year first hereinbefore written.

[SEAL.] H. PRICE, *President.*

W. H. PRICE, *Secretary.*

J. EDGAR THOMSON, [SEAL.]
W. DENNISON, [SEAL.]
Trustees.

Witnesses:
HENRY C. SPACKMAN.
W'M M. SPACKMAN.
P. W. HUNTINGTON.
E. C. SMITH.

STATE OF IOWA,
County of Scott, ss:

Be it remembered, that on this first day of July, in the year of our Lord one thousand eight hundred and seventy-one, before me, a notary public in and for the county and State aforesaid, personally came Hiram Price, president, and William H. Price, secretary of the Davenport and S't Paul Railroad Company, to me known to be the identical persons described in and who executed the within and foregoing instrument, and
82 severally acknowledged that they executed the same as and for their voluntary act and deed in their respective capacities as president and secretary of the said the Davenport and S't Paul Railroad Company, and as and for the act and deed of the said corporation, and, furthermore, they did severally acknowledge and declare that the seal attached to said instrument is and was, at the date thereof, the corporate seal of the said corporation, and was so affixed to the said instrument by order of the board of directors of the said company, and that by like authority they have executed the same as and for the act and deed of the said company.

Given under my hand and seal notarial, at the city of Davenport, in the county and State aforesaid, on the day and year above written.

[SEAL.] ALFRED SULLY,
Notary Public, Scott County, Iowa.

THE STATE OF PENNSYLVANIA,
City of Philadelphia, ss :

Before me, the undersigned, a notary public of the State of Pennsylvania, duly commissioned and qualified, personally came the above-named John Edgar Thomson, trustee, and one of the parties of the second part in the foregoing mortgage and deed of trust, and personally known to me as the person who signed the same as such, and acknowledged that he did sign, seal, and execute the same for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed
84 my notarial seal this sixth day of July, A. D. 1871.

[SEAL.] HENRY C. SPACKMAN,
Notary Public.

STATE OF OHIO,
Franklin County, ss :

Before me, the undersigned, a notary public of the State of Ohio, duly commissioned and qualified, personally came the above named William Dennison, trustee, and one of the parties of the second part in the foregoing mortgage and deed of trust, and personally known to me as the person who signed the same as such, and acknowledged that he did sign, seal, and execute the same for the uses and purposes therein mentioned. In testimony whereof I have hereunto set my hand and affixed my notarial seal this first day of July, A. D. 1871.

[SEAL.] T. J. JANNEY,
Notary Public in and for Franklin Co., Ohio.

85 STATE OF IOWA,
Scott County, ss :

Filed for record the 2d day of September, A. D. 1871, at 9.50 a. m., and recorded in book R, town-lot mortgages, pages 211, '12, '13, '14, '15, 16, '17, '18, '19, '20, '21, '22.

FRANK M. SUITER, *Recorder.*

STATE OF IOWA,
Clinton County, ss :

Filed for record October 7, 1871, at 11.50, and recorded in book 17 of mortgages, pages 241–252, inclusive.

H. F. BOWEN, *Recorder.*

STATE OF IOWA,
Jackson County, ss :

Filed for record the 17th day of November, A. D. 1871, at 10.30 o'clock a. m., and recorded in book I of mortgages, on pages 612 to 629.

JOHN DONNELLY, *Recorder.*

86 STATE OF IOWA,
Cedar County, ss :

Filed for record December 11, 1871, at 1.30 o'clock p. m., and recorded in book of land mortgages on pages 129 and

JESSE JAMES,
Recorder.
Per ADLER.

STATE OF IOWA,
Jones County, ss :

Filed for record January 23, 1872, at 11 a. m., and recorded in book 29 at pages 151–165 of mortgages.

R. McDANIEL,
Recorder.

STATE OF IOWA,
Delaware County, ss :

This instrument was filed for record this 7th day February, 1872. at 3.15 o'clock p. m., and recorded in book B of mortgages of town lots, on pages 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, and 485.

HENRY HARGER,
Recorder.

87 FAYETTE CO., IOWA,
Recorder's Office, ss :

Filed for record February 8, 1872, at 8 o'clock p. m., and recorded in book R of mortgages, on pages 184 to 201.

E. H. KINYON,
Recorder.

CLAYTON CO., IOWA,
Recorder's Office, ss :

Filed for record February 9, 1872, at 1 o'clock p. m., and recorded in vol. 13 of land mortgages, on pages 273 to 285.

R. L. FREEMAN,
Recorder.

OFFICE OF SEC'Y OF STATE,
S't Paul, Minn., ss :

Filed in this office February 23, 1872, at 9 o'clock a. m., and recorded in book A general R. R. records, page 103 and

L. P. JENNISON,
Sec'y of State.

88 STATE OF IOWA,
Howard County, ss :

Filed for record February 28, 1872, at 5 p. m., recorded in book G of mortgages, on pages 58 to 70 inclusive.

W'M H. PATTERSON,
Recorder.

STATE OF IOWA,
Winnesheik Co., ss :

Filed for record February 29, A. D. 1872, at 6.30 o'clock p. m. Recorded in book H of mortgages, on pages Nos. 545 to 557 inclusive.

CYRUS McKAY,
Recorder.

STATE OF IOWA,
Chickasaw Co., ss :

Filed for record March 1, 1872, at 2 p. m. Recorded in book G of mortgages on pages 337 to 349 inclusive.

C. A. HARRIS,
Recorder.

89 OFFICE OF REGISTER OF DEEDS,
Olmsted Co., Minn, ss :

I hereby certify that the within instrument was filed in this office for record March 27, A. D. 1872, at 10 o'clock a. m., and recorded in book 27 of mortgages, on pages 211 to 221 inclusive.

THOMAS BROOKS,
Register of Deeds.

OFFICE OF REGISTER OF DEEDS,
Goodhue Co., Minn., ss :

Filed for record in this office April 4, A. D. 1872, at 5 o'clock p. m.,

and duly recorded in book 20 of mortgages, on page' 355 to 373 inclusive.

CHA'S WARD,
Register of Deeds.
By BOSWORTH,
Deputy.

STATE OF MINNESOTA,
County of Fillmore, ss:

I hereby certify that this instrument was filed for record in
90 this office April 15, A. D. 1872, at 9 o'clock a. m., and was duly record' in book P of mortgages, on pages 597, '98, '99, 600, 601, '2, '3, '4, '5, '6, '7, '8, '9.

LARS O. HAMRE,
Register of Deeds.

STATE OF MINNESOTA,
County of Dakota, Office Register of Deeds, ss:

I hereby certify that the within mortgage was recorded in this office on the 22d day of April, A. D. 1872, at 3 p. m., in book V of mortgages, on pages 223, '4, '5, '6, '7, '8, '9, 230, '1, '2, '3, '4.

N. F. W. KRANZ,
Register of Deeds.

91 EXHIBIT B B.

This indenture, made on the first day of July, in the year of our Lord one thousand eight hundred and seventy-one, between the Davenport and S't Paul Railroad Company, a corporation organized and formed by and under the laws of the State of Iowa, party of the first part, and John Edgar Thomson of the city of Philadelphia, in the State of Pennsylvania, and William Dennison of the city of Columbus, in the State of Ohio, parties of the second part, witnesseth:

That whereas the said party of the first part is authorized by law to borrow all such sum or sums of money as shall be necessary for the construction, equipment, and maintenance of its road, and to convey all its corporate property, franchises, and effects, by mortgages and
92 deeds of trust, to secure payment of all such indebtedness as shall be so contracted by it;

And whereas the said party of the first part has, by a resolution of its board of directors, duly authorized and empowered its president and secretary to execute, and in its corporate name to issue bonds, to be designated first-mortgage bonds, to be secured by a mortgage or deed of trust, in such form and with such covenants and conditions as the said president should deem most desirable for the best interests of the said corporation, for the purpose of securing the necessary means to iron and equip its said railroad, and a sinking-fund of $40,000 per annum, to begin July 1st, 1875, the said bonds to be issued at a rate not
93 to exceed the sum of $20,000 for each mile of the said railroad upon which the work of grading, bridging, and tieing shall have been completed, and to be issued from time to time, as the said work shall progress;

And whereas the said resolution authorized the said president to designate the trustees, and John Edgar Thomson, of Pennsylvania, and William Dennison, of Ohio, having been designated by him as such trustees, to whom the said property of the said corporation should be conveyed to secure the payment of the principal and interest of the said bonds, so to be issued, to incorporate in such mortgage or deed of trust

as should be executed for the purpose aforesaid such covenants and conditions as should be deemed by him necessary and proper to
94 promote and sustain public confidence in the security of the said bonds, and fix the rate of interest which the said bonds should bear;

And whereas the said president has determined to issue the said bonds in the sums of $1,000 each, payable at the agency of the said railroad company, in the city of New York, on the first day of July, in the year of our Lord one thousand nine hundred and eleven, bearing interest at the rate of seven per centum per annum, payable semi-annually in New York, London, or Frankfort, at suitable agencies, to be selected in said cities by said railroad company, and also make both the principal and interest of the said bonds payable in gold coin of the United States of America of, or equal to, the present standard; and to have the
95 said bonds duly prepared and deposited with the said parties of the second part, to be delivered over by them to the treasurer of the said company, on the order of the president, in an amount from time to time, not to exceed the sum of $20,000 for each mile of said *the* road upon which the work of grading, bridging, and tieing shall have been completed, which said bonds are in the form following, that is to say—

FORM OF BOND.

$1,000.] Whole issue, $6,000,000. [No. .

UNITED STATES OF AMERICA, STATE OF IOWA.

Seven per cent. first mortgage sinking-fund bond.

The Davenport and S't Paul Railroad Company.

The Davenport and S't Paul Railroad Company, a corporation
96 existing under and by authority of the laws of the State of Iowa, promises to pay to John Edgar Thomson, or bearer, on the first day of July, one thousand nine hundred and eleven, in the city of New York, one thousand dollars in United States gold coin, of or equal to the present standard, with interest thereon at seven per cent. per annum, free of United States taxes, semi-annually, on the first days of January and July, in like gold coin, upon presentation and surrender of the annexed coupons therefor, such interest to be paid either in New York, London, or Frankfort, at suitable agencies, to be hereafter named, in each of those cities, at the option of the holders, as specified in the coupons.

In case of default in payment of such interest when due, and con-
97 tinuance of such default for sixty days after demand, the principal of this bond will be subject to become due and payable upon the condition provided in the trust-deed hereinafter mentioned.

This bond is one of six thousand bonds for one thousand dollars each, of like tenor and date, numbered from one to six thousand, inclusive, to be issued on the said railroad, at the rate of twenty thousand dollars per mile, as from time to time the road shall progress from the city of Davenport, in the State of Iowa, to the city of S't Paul, in the State of Minnesota, it being expressly understood that said issue of bonds shall not exceed the amount named per mile, and shall only be issued as the road shall progress.

The owner of this bond shall have the right at any time to convert it into the stock of the company at par.

98 The payment of this bond is secured by a mortgage or deed of trust of the company on its road-bed, depot, grounds, and buildings, rolling stock, machinery, franchises, and all its property of every kind, as also net incomes, acquired and to be acquired, to John Edgar Thomson, of Pennsylvania, and William Dennison, of Ohio, trustees, dated July 1st, 1871, and duly recorded in all the counties through which the road is being constructed.

This bond is moreover secured by a sinking fund of $40,000 per annum, to begin July 1st, 1875, to be set apart and increased annually for the redemption of the said bonds.

This bond is transferable by delivery, but it may be registered as to its ownership on a registry to be kept by the company.

99 After a registry of ownership, certified hereon by the transfer agent of the company, no transfer shall be valid unless made on the books of the company, except if the last transfer be to bearer, transferability by delivery shall be restored, subject to the successive registration and transfers to bearer, as aforesaid, at the option of any lawful holder. This bond is further authenticated by the endorsement of said trustees hereon.

In witness whereof the said company has caused the foregoing to be attested on its behalf by the signatures of its president and secretary and its corporate seal to be affixed hereto, at Davenport, Iowa, this first day of July, A. D. 1871.

President.

Secretary.

100 *Form of coupon.*

£7 5s. 10d. $35.00. Fl. 87.30.

The Davenport and S't Paul Railroad Company will pay to the bearer as he may elect, in the city of New York, thirty-five dollars United States gold coin, or in London seven pounds five shillings and ten pence sterling, or in Frankfort O. M., eighty-seven florins and thirty krutzers, free of United States taxes, on the first day of January, 18 , being six months' interest on bond No. .

Secretary.

Form of trustees' certificate.

The undersigned hereby certify that this bond is one of the series of bonds described in and secured by the within-mentioned deed of trust or mortgage, bearing date the first day of July, A. D. 1871.

Trustees.

101 And to each of the said bonds there is to be affixed the requisite United States internal revenue stamp.

And whereas the said board of directors of the Davenport and S't Paul Railroad Company have formally passed and adopted a resolution authorizing the president and secretary of the said company to execute in its corporate name, and to affix thereto its corporate seal, a deed of trust to the said John Edgar Thomson and William Dennison, to secure the payment of the principal and interest of the said bonds, as the same shall become due, according to the tenor and effect thereof:

Now, therefore, this indenture witnesseth that the said Davenport

and S't Paul Railroad Company, for and in consideration of the premises, and of the sum of one dollar paid to it this day, paid by said parties of the second part, the receipt whereof is hereby acknowledged, and for the purpose of securing the payment of the principal and interest of the said bonds as the same shall become due and payable, according to the tenor and effect thereof, and of the said coupons thereto severally annexed, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, convey, release, and confirm, unto the said parties of the second part and to their successor or successors, as trustees, all and singular the road, bridges, and superstructure of the said The Davenport and S't Paul Railroad, including all branches, side tracks, additions, turnouts, rights of way, depot grounds, coal lands, timber lands, and other lands now owned and that hereafter may be acquired by said party of the first part, all *all* depots, station houses, engine houses, car houses, water tanks, freight houses, grain elevators, wood houses, coal houses, car shops, and machine shops, and all other buildings whatsoever, now erected or hereafter to be erected.

Also all kinds of machinery and tools now held and owned or hereafter to be acquired by the said party of the first part for uso in connection with the said railroad, including all locomotives, tenders, cars, or other rolling stock or equipments, and all tools, implements, fuel, and materials of every kind, used or procured for use in the constructing, operating, repairing, or replacing any part or parcel or the said railroad, or any part of its appurtenances; also all property and franchises connected with or relating to the said railroad or any part of its business in any wise whatsoever, which are now held or may be hereafter in any way acquired by the said party of the first part, and also all rights, claims, and benefits in or to any lease, contract, or agreement now made, or which may be hereafter made, by the said first party with any person or persons whomsoever.

Together with all and singular the tenements and appurtenances thereto belonging or in any wise appertaining, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereto, and also all the estate, right, title, and interest whatsoever, as well at law as in equity, of the said party of the first part of, in, to, or out of the same, and every part and parcel thereof.

To have and to hold the premises above particularly described and set forth with the said parties of the second part, and to their successor or successors, as trustee or trustees, in trust nevertheless for the uses and purposes hereinafter set forth and expressed, and upon the terms, covenants, agreements, and conditions following, that is to say—

First. The actual possession, occupation, and management, and the use and control of the said railroad, and of all the appurtenances thereof, shall be, remain, and lie with the said party of the first part, without molestation or interference by or from the parties of the second part, or their successor or successors in the said trust, until default be made in the payment of the principal of the said bonds, or some of them, or until default be made in respect to something herein required to be done by the said party of the first part, and until such default be made as aforesaid the said party of the first part shall take and use all the earnings, incomes, profits, rents, tolls, and issues of the premises, and dispose of the same in any manner not inconsistent with the terms of this instrument.

Second. The bonds which shall be executed and issued by the said

party of the first part, under the provisions of this instrument, and therein recited, shall be delivered to said trustees, to be certified by them as trustees, said certificate to be signed in the proper handwriting
107 of at least one of the said trustees, and no bond shall be valid or binding, or be benefited by the provisions hereof, unless the same shall be certified by the said trustees in form aforesaid, and the said trustees shall not at any time certify or allow to be issued any bonds in excess of the rate of twenty thousand dollars for each mile of the said road upon which the work of grading, bridging, and tieing shall have been finished and completed.

And the said parties do hereby further mutually grant, covenant, promise, and agree to and with each other that although by reason of the terms and limitations in these presents expressed it shall be unlawful for the trustees to certify any part of the issue of bonds herein
108 provided for, nevertheless, upon deposit of the purchase-money thereof by the purchaser as hereinafter provided, the bonds so purchased shall be certified by the trustees and issued to such purchaser.

Provided always, that the purchase money therefor shall be deposited to the credit of the trustees in some banking-house in the city of New York or Philadelphia, to be named by both the purchasers and the trustees, which said purchase money shall be used only in payment for iron and equipment of said railroad, at a rate not to exceed the sum of twenty thousand dollars for each mile of the said railroad upon which the work of grading, bridging, and tieing shall have been completed, and be paid from time to time as the said work shall progress,
109 upon written direction of the trustees.

Third. In case default shall be made in the payment of any of the interest coupons annexed to any of the foregoing bonds, according to the tenor thereof, and if such default shall continue for the period of six months, it shall be lawful for the parties of the second part, by their duly authorized officer, agent, or attorney, upon the request of the person or persons owning and holding one-fourth in amount of such delinquent interest coupons, made known to the said parties of the second part in writing, signed by the person or persons therein interested or by his or their lawfully constituted agents or attorney, to enter into and upon all and singular the premises hereby conveyed, and each
110 and every part thereof, and to have, hold, and use the same under such superintendent, manager, receiver, or agent as the parties of the second part may select to conduct the business of the said railroad and its branches, and to exercise the franchises pertaining thereto, and to make from time to time all repairs, replacements, additions, and improvements thereto as may seem judicious, and to collect all earnings, dues, freights, incomes, rents, tolls, issues, and profits of the same, and of every part thereof, and after deducting the necessary expenses of operating the said railroad and of conducting the business thereof, and of all the said repairs, replacements, additions, and improvements, and of all taxes, assessments, or liens upon the said
111 premises, or any part thereof, as well as a just compensation for their or his own services, to apply the moneys arising as aforesaid to the payment of interest coupons in the order in which they shall have respectively become due, and after paying all such past due coupons and all installments or balances thereof, to apply the remainder of said moneys to the satisfaction of the principal of the aforesaid bonds which may at that time be due and unpaid, rateably, and without discrimination or preference.

Fourth. In case default shall be made as aforesaid and shall continue as aforesaid, it shall also be lawful for the said parties of the second part, after entry as aforesaid or without entry, on the request of the
112 person or persons owning and holding the majority in amount of the said delinquency expressed in writing to the said parties of the second part, to sell and dispose of the premises hereby conveyed at public auction, in the city of New York, or at such place as the parties of the second part may designate, having first given notice of the time and place of such sale by advertisement, published not less than once a week for six months, in one or more newspapers published in each of the cities of New York and Davenport, and to adjourn the said sale from time to time by announcement at the time and place advertised without other notice, and to make and deliver unto the purchaser or purchasers thereof good and sufficient deeds, conveyance, or other assurance in the law, to vest in the said purchaser or purchasers of the said
113 premises an absolute estate in the said premises in fee-simple, which sale so made as aforesaid shall be a perpetual lien, both in law and in equity, against the said party of the first part, and all and every other person or persons claiming or to claim the same by, from, through, or under the said party of the first part, and after deducting from the proceeds of such sale just allowance for all the expenses thereof, including a reasonable amount for attorneys' fees, and any other necessary expenses incurred by the said trustees in managing the business of the said railroad, while in possession or in arranging the sale thereof, to apply the remaining proceeds to the payment of the principal of such of the aforesaid bonds as may be at that time unpaid, whether or not the same shall have previously become due, and the interest which
114 shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, but rateably to the aggregate amount of such unpaid principal and such accrued and unpaid interest in United States gold coin at par, and if, after satisfaction thereof as aforesaid, a surplus of the said proceeds shall remain, to pay the same over to the party of the first part.

Fifth. At any sale of the aforesaid property, or any part thereof, whether made under the power herein granted or by judicial authority, the parties of the second part may bid for and purchase the property so sold, or any part thereof, for and on behalf of the holders of the bonds hereby secured and then outstanding in proportion to the respective interests of such bondholders.

115 Sixth. In case default shall be made in payment of any half-year's interest on any of the aforesaid bonds according to the tenor and effect of the coupons thereto annexed, and if such default shall continue for the period of six months after such coupons shall have become due and payment thereof shall have been demanded, then the principal of all the bonds secured hereby, if a majority in interest of all the holders of the said bonds shall so direct in writing, before the interest so in arrears shall have been paid, shall be declared by the said parties of the second part to be immediately due and payable, and thereupon the same shall become due and payable, anything contained in the said bond or herein to the contrary notwithstanding.

116 Seventh. The said party of the first part shall from time to time and as often as thereunto requested by the said trustees, or their successor or successors in the said trust, execute, acknowledge, and deliver all such further deeds, conveyances, and acceptances as shall be necessary for the better assuring unto the trustees aforesaid, or their successors, the said railroad and equipments, rights and equities

hereinbefore mentioned, or intended so to be, and all other property and things whatsoever which may be hereafter acquired for use in connection with the same or any part thereof, and all the franchises now held, or hereafter to be acquired, including the franchise to be a corporation.

Eighth. The said trustees and their successors shall have
117 power, in their discretion, upon the written request of the party of the first part, to convey by way of release or otherwise, to the person or persons designated by the said party of the first part, any lands acquired or held for the purpose of stations, depots, shops, or other buildings, any land or property which, in the judgment of the said trustees, for the time being shall not be necessary for use in connection with the said railroad, or which may have been held for a supply of fuel, gravel, or other material, and also to convey as aforesaid, on like request, any land not occupied by the track which may become dis-
used by reason of a change of the location of any station-house,
118 depot, shop, or building connected with the said railroad, and such lands occupied by the track and adjacent to such station-house, depot, shop, or other building, as the said party of the first part may deem it expedient to disuse or abandon by means of such change and to consent to any such change and to such other changes in the location of the track, or depots, or other buildings, as in their judgment sha l have become expedient, and to make and deliver the conveyances necessary to carry the same into effect; but any proceeds from such sales are to be placed at the disposal of the trustees, to be by them applied to the sinking fund, and any land which may be acquired for permanent use in substitution for any so released shall be conveyed to the said trustees upon the trusts of these presents, and the said trustees,
for the time being, shall also have full power to allow the said
119 party of the first part from time to time to dispose of, according to their discretion, such portions of the equipments, machinery, and implements at any time held or acquired for the use of the said railroad as may have become unfit for use, replacing the same by new, which shall be conveyed to the said trustees or otherwise made subject to the operation of these presents.

Ninth. It his hereby declared and agreed that it shall be the duty of the trustees aforesaid, and their successors, to exercise the power of entry hereby granted, or the power of sale hereby granted, or both, or to take the appropriate proceedings in equity, or at law, to enforce the rights of the holders of the said bonds under these presents upon the
written request hereinbefore mentioned, when the person or per-
120 sons making the same shall furnish to the said trustees a proper indemnification against the costs and expenses to be incurred by them therein.

Tenth. It is mutually agreed by and between the parties "hereto that the words 'trustees' or 'trustee' respectively, as used in these presents, shall be construed to mean the persons or person who, for the time being, shall be charged with the execution of the trusts under these presents, whether such persons or person be the parties of the second part hereto, or either of them, or successors or successor of the said parties of the second part, or either of them, in said trust. And it is further mutually agreed that each of the said trustees shall be entitled to just compensation for any
and all services which he shall hereafter render in his trust, to be
121 paid by the said party of the first part, or out of the income of the trust property, and that neither of the said trustees shall be responsible for the default or misconduct of the other, or for the default

or misconduct of any agent appointed in pursuance of these presents, if such agent be selected with reasonable care. And it is hereby further agreed that either of the said trustees may resign and be discharged from the performance of the trust created by these presents by giving notice in writing to the said party of the first part, and to his associate trustee if there be such, of his intention so to resign, to be served at least three months before the time limited therein for the taking effect of such resignation, and that the said trustees or either of them may be
122 removed by the holders of a majority in interest of the whole amount of said bonds by an instrument in writing signed by such majority in interest.

"And it is further agreed that in case at any time hereafter the said trustees, or either of them, or any trustee hereafter appointed shall die, or resign, or be removed as her'in provided or otherwise, or shall become incapable or unfit to act in said trust, a successor to such trustee shall be appointed by the holders of a majority in interest of the total amount of said bonds then outstanding, by an instrument in writing duly executed by such holders; that in case a vacancy shall at any time occur in said trust by death, resignation, or otherwise, the surviving or continuing trustee shall, during such vacancy, be vested with all the rights,
123 powers, and authorities granted by these presents to the said parties of the second part; that any act or thing which it is herein made the duty of the said trustees to do, as distinguished from matters in their discretion, may be done by one of the said trustees as validly as by both, in case of the inability, refusal, or unreasonable delay of either of them to join in doing the same, and that upon the resignation or removal of any trustee and the appointment of another trustee in his place, all the estate and interest, rights, powers, and authorities under this indenture of the trustee so resigning or being removed shall be transferred to and become vested in the new trustee so appointed, without any further assurance or conveyance, but the trustee so resigning or being removed shall, on the written request of the party of
124 the first part, or of the new trustee who may be appointed, immediately execute a proper deed or deeds of conveyance to vest in such new trustee all the estate and interest, rights, powers, and authorities which were vested in or held by such resigning or removed trustee, under or by virtue of these presents; provided, nevertheless, and it is hereby agreed and declared that, in case it shall at any time hereafter prove impract'able to appoint a trustee hereunder in the manner hereinbefore provided, and that a vacancy in said trust shall remain unfilled for the space of sixty days, application on behalf of all the holders of the bonds secured hereby may be made on reasonable notice in writing to the said party of the first part, and to the surviving and continuing trustee, if there be such, by holders of said bonds to the aggre-
125 gate amount of one hundred thousand dollars to any court of competent jurisdiction for the appointment of a new trustee or new trustees."

Eleventh. The said party of the first part, in consideration of the premises, and of the said said sum of one dollar duly paid as aforesaid, hereby further covenants and agrees to and with the said parties of the second part, and their successor or successors in the said trust to have an office or agency in the city of New York for the payment of the principal, and an agency in each of the cities of New York, London, and Frankfort-on-Main, the payment of the interest of the bonds hereby secured as the same shall respectively become due and payable.

Twelfth. The said party of the first part, for the considerations

126 aforesaid, hereby further covenants and agrees to and with the said parties of the second party and their successors or successors, that the proceeds of the said bonds shall at all times be faithfully applied to the uses and purposes hereinafter specified, and to no other use or purpose whatso'ver.

Thirteenth. The said party of the first part agrees and covenants with the parties of the second part and their successors that it will create a sinking-fund for the redemption of the whole amount of the bonds hereby secured, and will therefor set apart and deposit with a sinking-fund commissioner or commissioners, to be appointed by the party of the first part, on the first day of July, 1875, the sum of $40,000, and will on the first day of July of each and every year thereaf-
127 ter deposit with said commissioner or commissioners the like sum of $40,000; such annual deposits to be continually invested and compounded with the interest thereof for the increase of the said sinking-fund until the maturity of said bonds; such sinking-fund moneys shall from time to time under the orders of the party of the first part be invested in the purchase of the bonds hereby secured as long as the same can be purchased under or at par, and when this cannot be done, then in such other bonds as shall be designated by the party of the first part, with the consent of the said parties of the second part, and the money a'cruing on any and all of such investments for interest, as fast as the same shall be received, shall be added and paid into such
128 sinking-fund and compounded therein continually, and reinvested in like manner with the other moneys of said fund, and the same shall be used solely to redeem and eventually pay off said bonds herein and hereby secured.

That the board of directors of said railroad company, party of the first part, shall have entire control over the management of said sinking-fund and every person in charge of, or connected with the same, and direct how it shall be kept, and the manner of keeping the accounts thereof, and shall require ample security to be given to them by any person in charge of its moneys or its securities or bonds for its safe keeping.

Provided that no securities shall be purchased for said fund
129 other than the bonds secured hereby, without the consent of the parties of the second part, as aforesaid.

Fourteenth. And the said party of the first part for the considerations aforesaid, hereby further covenants and agrees to and with the said parties of the second part, that it, the said party of the first part, shall and will at all times hereafter observe, perform, and keep all and every the conditions, covenants, and provisions herein contained to be by the said party of the first part performed and kept.

Fifteenth. If the party of the first part shall well and truly pay the sums of money herein required to be paid by the said party, and all interest thereon, and at the times and in the manner hereinbefore specified and shall well and truly keep and perform all the things
130 her'in required to be kept and performed by the said party of the first part, according to the true intent and meaning of these presents, then and in that case the estate, right, title, and interest of said parties of the second part, and of their successors in the trust hereby created, shall cease, determine, and become absolutely void; otherwise to be and remain in full force and virtue.

Sixteenth. In all cases in which the trustees may be required to act they are hereby invested with full powers of arbitrament and of compromise, and of appointing agents and attorneys to act in their behalf.

In testimony whereof, the said party of the first part has caused
131 its corporate seal to be hereto affixed, and these presents to be attested by the signatures of its president and secretary; and the parties of the second part, to testify their acceptance of the said trusts, have hereunto subscribed their names on the day and year first hereinbefore written.

[SEAL.] DAVENPORT AND S'T PAUL RAILROAD COMPANY,
By GEO. H. FRENCH,
President.

Attest: [SEAL.] W. H. PRICE,
Secretary D. and S't P. R. R. Co.

J. EDGAR THOMSON, *Trustee.* [SEAL.]
W. DENNISON, *Trustee.* [SEAL.]

Signed, sealed, and delivered in the presence of—
LEWIS SANDERS.
GARDINER F. MCLANDLESS.

UNITED STATES OF AMERICA:

STATE OF NEW YORK,
City and County of New York, ss:

On this sixteenth day of May, A. D. 1872, before me, a notary
132 public duly commissioned by the governor of the State of New York, and duly qualified to administer oaths and take acknowledgments of deeds for the county of New York, personally appeared George H. French and W. H. Price, to me known, and known to me to be the identical president and secretary of the Davenport and S't Paul Railroad Company, and known to me to be the persons who executed the foregoing instrument, who, being by me duly and severally sworn, said that they reside in the city of Davenport, State of Iowa; that they were respectively the president and secretary of the said company; that they knew the corporate seal of said company; that the seal affixed to the foregoing instrument was such corporate seal; that it was affixed
133 by order of the board of directors of said company; and that they signed their names thereto by the like order as president and secretary respectively of said company; and the said president and secretary thereupon severally acknowledged the execution of the foregoing instruments as the voluntary act and deed of said company.

And on the same day, before me, the said notary public, personally appeared William Dennison, to me known, and known to me to be the identical person and trustee described in and who executed the foregoing instrument, who duly acknowledged as such trustee that he executed the same as his voluntary act and deed.

And on the fourteenth day of May, A. D. 1872, before me, the said notary public, personally appeared J. Edgar Thomson, to me known,
134 and known to me to be the identical person and trustee described in and who executed the foregoing instrument, who duly acknowledged as such trustee that he executed the same as his voluntary act and deed.

In witness whereof I have hereunto set my hand and affixed my seal.

[SEAL.] LEWIS SANDERS,
Notary Public, New York.

EXHIBIT C.

This indenture, made the first day of July, in the year of our Lord

one thousand eight hundred and seventy-one, by and between the Davenport and S't Paul Railroad Company, a corporation formed, organized, and existing by and under the laws of the State of Iowa, party of
135 the first part, an' John Edgar Thomson, of the city of Philadelphia, in the State of Pennsylvania, and William Dennison, of the city of Columbus, in the State of Ohio, parties of the second part.

Whereas the said party of the first part has made, executed, and delivered to said parties of the second part a certain indenture of even date with these presents, and therein called a mortgage or deed of trust, to secure the payment of its first-mortgage bonds, as in said indenture mentioned;

And whereas it is desirable, for the better protection of the rights of purchasers and holders of said bonds, that said mortgage or deed of trust should be amended in the manner hereinafter set forth:

Now, therefore, these presents witness that, in consideration of
136 the premises and of one dollar to each by the other in hand paid, the said parties of the first part and the said parties of the second part do hereby mutually grant, covenant, promise, and agree to and with each other as follows:

That the said indenture of mortgage or trust-deed shall be, and shall for all intents and purposes be considered and taken to be, amended in the following respects:

First. That, in lieu of the tenth and sixteenth articles thereof, the said sixteenth article be omitted entirely from said indenture, and the said tenth article as therein contained be amended and made to read as follows:

"Tenth. It is mutually agreed by and between the parties hereto that the words 'trustees' or 'trustee,' respectively, as used in these
137 presents, shall be construed to mean the persons or person who for the time being shall be charged with the execution of the trusts under these presents, whether such persons or person be the parties of the second part hereto, or either of them, or successors or successor of the said parties of the second part, or either of them, in said trust.

"And it is further mutually agreed that each of the said trustees shall be entitled to just compensation for any and all services which he shall hereafter render in his trust, to be paid by the said party of the first part, or out of the income of the trust property, and that neither of the said trustees shall be responsible for the default or misconduct of the
138 other, or for the default or misconduct of any agent appointed in pursuance of these presents, if such agent be selected with reasonable care.

"And it is hereby further agreed that either of the said trustees may resign, and be discharged from the performance of the trust created by these presents, by giving notice in writing to the said party of the first part, and to his associate trustee, if there be such, of his intention so to resign, to be served at least three months before the time limited therein for the taking effect of such resignation, and that the said trustees, or either of them, may be removed by the holders of a majority in interest of the whole amount of said bonds, by an instrument in writing signed by such majority in interest.

"And it is further agreed that, in case at any time hereafter
139 the said trustees, or either of them, or any trustee hereafter appointed, shall die, or resign, or be removed as herein provided, or otherwise, or shall become incapable or unfit to act in said trust, a successor to such trustee shall be appointed by the holders of a majority

in interest of the total amount of said bonds then outstanding, by an instrument in writing duly executed by such holders, that in case a vacancy shall at any time occur in said trust by death, resignation, or otherwise, the surviving or continuing trustee shall, during such vacancy, be vested with all the rights, powers, and authorities granted by these presents to the said parties of the second part; that any act or thing which it is herein made the duty of the said trustees to do, as
140 distinguished from matters in their discretion, may be done by one of the said trustees as validly as by both, in case of the inability, refusal, or unreasonable delay of either of them to join in doing the same, and that upon the resignation or removal of any trustee, and the appointment of another trustee in his place, all the estate and interest, rights, powers, and authorities, under this indenture, of the trustee so resigning or being removed shall be transferred to and become vested in the new trustee so appointed without any further assurance or conveyance, but the trustee so resigning or being removed shall, on the written request of the party of the first part or of the new trustee who may be appointed, immediately execute a proper deed or deeds of conveyance to vest in such new trustee all the estate and interest,
141 rights, powers, and authorities which were vested in or held by such resigning or removed trustee under or by virtue of these presents; provided, nevertheless, and it is hereby agreed and declared, that in case it shall at any time hereafter prove impracticable to appoint a trustee hereunder in the manner hereinbefore provided and that a vacancy in said trust shall remain unfilled for the space of sixty days, application on behalf of all the holders of the bonds secured hereby may be made on reasonable notice, in writing, to the said party of the first part, and to the surviving and continuing trustee, if there be such, by holders of said bonds to the aggregate amount of one hundred thousand dollars, to any court of competent jurisdiction, for the appointment of a new trustee or trustees."

142 Second. And also that in the trustees' certificate endorsed on said bond, at the request of the holder or holders thereof, at any time, shall be added the words "and the supplemental deed of the same date."

Third. And also that article second of said indenture of mortgage or deed of trust, as therein contained, be amended and made to read as follows:

"Second. The bonds which shall be executed and issued by the said party of the first part, under the provisions of this instrument, and therein recited, shall be delivered to said trustees, to be certified by them as trustees, and no bond shall be valid or binding, or be benefited by the provisions hereof, unless the same shall be certified by the
143 said trustees in the form aforesaid; and the said trustees shall not at any time certify, or allow to be issued, any bonds in excess of the rate of twenty thousand dollars for each mile of the said road upon which the work of grading, bridging, and tieing shall have been finished and completed, save as hereinafter provided."

And the said parties do hereby further mutually grant, covenant, promise, and agree to and with each other that, if at any time before the whole work of grading, bridging, and tieing the entire line of the railroad in said indenture mentioned shall have been completed any part of the bonds in said indenture provided for cannot be issued by reason of the terms and limitations therein expressed, and if the
144 purchasers or purchaser of such bonds shall make deposit of the purchase-money thereof in the manner hereinafter provided, then

and in that case such bonds shall be issued and certified by the trustees, and delivered to the purchasers thereof.

Provided always that the purchase-money therefor shall be deposited to the credit of the trustees in some banking-house in the city of New York or Philadelphia to be named by both the purchasers and the trustees, which said purchase-money shall be used only in payment for iron and equipment of said railroad at a rate not to exceed the sum of twenty thousand dollars for each mile of the said railroad upon which the work of grading, bridging, and tieing shall have been com-
145 pleted, and be paid from time to time as the said work shall progress upon written direction of the trustees.

In witness whereof the said Davenport and S't Paul Railroad Company hath caused these presents to be sealed with its common seal, and to be subscribed by its president and secretary, and the said John Edgar Thomson and William Dennison have hereunto set their hands and seals the day and year first above written.

GEO. H. FRENCH,
President.

[SEAL.] W. H. PRICE,
Secretary.

J. EDGAR THOMSON,
W. DENNISON,
Trustees.

STATE OF IOWA,
Scott County:

Be it remembered that on this first day of February, anno
146 Domini one thousand eight hundred and seventy-two, before me, a notary public in and for the said county, personally came George H. French, president of the Davenport and S't Paul Railroad Company, and William H. Price, the secretary thereof, to me known to be the identical persons whose names are subscribed to the foregoing instrument, and in due form of law acknowledged the execution and delivery of the same to be their voluntary act and deed, done by virtue of the power in them vested by a resolution of the board of directors of the said company, to that end duly and amply passed and adopted, as and for the voluntary act and deed of the said The Davenport and S't Paul Railroad Company.

In testimony whereof I have hereunto set my hand and notarial
147 seal the day and year above written.

[SEAL.] ALFRED SULLY,
Notary Public, Scott County, Iowa.

STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

Before me, the subscriber, a notary public in and for the said city of Philadelphia, personally appeared the within named J. Edgar Thomson, trustee, and in due form of law acknowledged that he executed the foregoing indenture as his voluntary act and deed, and desired that the same might be recorded as such.

In testimony whereof I have hereunto set my hand and notarial seal this third day of February, A. D. 1872.

[SEAL.] HENRY C. SPACKMAN,
Notary Public.

148 STATE OF OHIO,
Franklin County, ss:

Before me, the subscriber, a notary public in and for said county, personally appeared the within named William Dennison, trustee, and acknowledged the signing and sealing of the foregoing mortgage or deed of trust to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal this fifth day of February, A. D. 1872.

[SEAL] T. J. JANNEY,
Notary Public in and for Franklin Co., Ohio.

STATE OF IOWA,
Scott County:

Filed for record the sixteenth day of February, A. D. 1872,
149 at 2.20 p. m., and recorded in book R, town lots, mortgages, page 320.

F. M. SMITH, *Recorder.*

(Other certificates of record omitted.)

EXHIBIT D.

This indenture, made the first day of March, in the year of our Lord one thousand eight hundred and seventy-two, by and between the Davenport and S't Paul Railroad Company, a corporation formed, organized, and existing by and under the laws of the State of Iowa, party of the first part, and John Edgar Thomson, of the city of Philadelphia, in the State of Pennsylvania, and William Dennison, of the city of Columbus, in the State of Ohio, parties of the second part:

Whereas the party of the first part has made, executed, and de-
150 livered to said parties of the second part a certain indenture, bearing date the first day of July, one thousand eight hundred and seventy-one, and therein called a mortgage or deed of trust, and at a later day has likewise made, executed, and delivered to said parties of the second part a deed supplemental to and amendatory thereof, likewise bearing date the first day of July, one thousand eight hundred and seventy-one, to secure the payment of its first mortgage bonds, as in said two deeds mentioned;

And whereas three thousand of the bonds provided for in said two deeds have been issued by said party of the first part in pursuance of said two deeds before the date of the date of these presents;

And whereas it is deemed desirable for the better protection of holders of said bonds that said mortgage or deed of trust should be fur-
151 ther amended in the manner hereinafter set forth, and that provision be made to enable the holders of the said bonds already issued to exchange the same, upon surrender thereof, for a like amount of bonds of the amended form hereinafter provided for, and upon such surrender and exchange to acquire all the rights and benefits secured and intended to be secured by these presents:

Now, therefore, these presents witness that, in consideration of the premises and one dollar to each by the other in hand paid, the said parties of the first part and the said parties of the second part do hereby mutually grant, covenant, promise, and agree to and with each other, as follows:

That the said indenture of mortgage or trust deed shall be, and

152 shall for all intents and purposes be considered and taken to be, amended in the following respects:

First. That, in lieu of the tenth and sixteenth articles thereof, the said sixteenth article be omitted entirely from said indenture, and the said tenth article as therein contained be amended and made to read as follows:

"Tenth. It is mutually agreed by and between the parties hereto that the words 'trustees' or 'trustee' respectively, as used in these presents, shall be construed to mean the persons or person who for the time being shall be charged with the execution of the trusts under these presents, whether such persons or person be the parties of the second part hereto, or either of them, or successors or successor of the said parties of
153 the second part, or either of them, in said trust. And it is further mutually agreed that each of the said trustees shall be entitled to just compensation for any and all services which he shall hereafter render in his trust, to be paid by the said party of the first part, or out of the income of the trust property, and that neither of the said trustees shall be responsible for the default or misconduct of the other, or for the default or misconduct of any agent appointed in pursuance of these presents, if such agent be selected with reasonable care.

"And it is hereby further agreed that either of the said trustees may resign and be discharged from the performance of the trust created by these presents by giving notice in writing to the said party of
154 first part, and to his associate trustee, if there be such, of his intention so to resign, to be served at least three months before the time limited therein for the taking effect of such resignation, and that the said trustees, or either of them, may be removed by the holders of a majority in interest of the whole amount of said bonds by an instrument in writing signed by such majority in interest.

"And it is further agreed that in any case, at any time hereafter, the said trustees, or either of them, or any trustee hereafter appointed, shall die or resign or be removed, as herein provided or otherwise, or shall become incapable or unfit to act in said trust, a successor to such
155 trustee shall be appointed by the holders of a majority in interest of the total amount of said bonds then outstanding, by an instrument in writing duly executed by such holder; that in case a vacancy shall at any time occur in said trust, by death, resignation, or otherwise, the surviving or continuing trustee shall during such vacancy be vested with all the rights, powers, and authorities granted by these presents to the said parties of the second part; that any act or thing which it is made the duty of the said trustees to do, as distinguished from matters in their discretion, may be done by one of the said trustees as validly as by both in case of the inability, refusal, or unreasonable delay of either of them to join in doing the same; and that upon the resignation or removal of any trustee, and the appointment of another trustee in his place, all the estate and interest, rights, powers, and authorities under this indenture of the trustee so resigning or being removed shall be transferred to and become vested in the new
156 trustee so appointed without any further assurance or conveyance, but the trustee so resigning or being removed shall, on the written request of the party of the first part or of the new trustee who may be appointed, immediately execute a proper deed or deeds of conveyance to vest in such new trustee all the estate and interest, rights, powers, and authorities which were vested in or held by such resigning or removed trustee under or by virtue of these presents; provided, nevertheless, and it is hereby agreed and declared, that in case it shall at any

time hereafter prove impracticable to appoint a trustee hereunder in the manner hereinbefore provided and that a vacancy in said trust shall remain unfilled for the space of sixty days, application on behalf of all the holders of the bonds secured hereby may be made, on reasonable notice in writing to the said party of the first part, and to the surviving and continuing trustee, if there be such, by holders of said bonds to
157 the aggregate amount of one hundred thousand dollars, to any court of competent jurisdiction, for the appointment of a new trustee or new trustees."

Second. And also that the form of bonds recited, set forth, and provided for in said mortgage or deed of trust shall be amended in the following particulars, viz: "The payment of this bond is secured by a mortgage or deed of trust of the company on its road bed, bridges, depot grounds and buildings, rolling-stock, machinery, franchises, and all its property of every kind, as also net incomes acquired and to be acquired to John Edgar Thomson, of Pennsylvania, and William Dennison, of Ohio, trustees, dated July 1, 1871," shall be amended and made to read as follows: "The payment of this bond is secured by a mortgage or deed of trust, bearing date July 1st, 1871, and by a deed supplemental to and amendatory thereof, bearing date March 1st, 1872, executed by said company on its road-bed, bridges, depot grounds and build-
158 ings, rolling-stock, machinery, franchises, and all its property of every kind, as also net incomes acquired and to be acquired, to John Edgar Thomson, of Pennsylvania, and *and* William Dennison, of Ohio, trustees."

And also that the trustees' certificate endorsed on said bonds shall be amended and made to read as follows:

"The undersigned hereby certify that this bond is one of the series of bonds described in and secured by the within-mentioned mortgage or deed of trust, dated July 1st, 1871, and the deed supplemental to and amendatory thereof, dated March 1st, 1872."

Third. And also that article second of said indenture of mortgage or deed of trust, as therein contained, be amended and made to read as follows:

159 "Second. The bonds which shall be executed and issued by the said party of the first part under the provisions of this instrument, and therein recited, shall be delivered to said trustees to be certified by them, as trustees, and no bond shall be valid or binding or be benefitted by the provisions hereof unless the same shall be certified by the said trustees in the form aforesaid, and the said trustees shall not at any time certify or allow to be issued any bonds in excess of the rate of twenty thousand dollars for each mile of the said road upon which the work of grading, bridging, and tieing shall have been finished and completed."

And the said parties do hereby further mutually grant, covenant, promise, and agree to and with each other that no other or fur-
160 ther issue of said bonds in the form provided for in said mortgage or deed of trust shall be issued by said parties of the first part or certified by said parties of the second part; and that upon surrender of such of said bonds as have been issued before the day of the date of these presents said party of the first part will issue and deliver in exchange therefor an equal amount of bonds of the amended form herein above provided for, and the bonds so received in exchange shall thereupon be cancelled and the obligation thereof extinguished.

And the said parties do hereby further mutually grant, covenant, promise, and agree to and with each other that although by reason of

the terms and limitations in said mortgage or deed of trust and
161 these presents expressed it shall be unlawful for the trustees to certify any part of the issue of bonds therein provided for, nevertheless, upon deposit of the purchase-money thereof by the purchaser, as hereinafter in these presents provided, the bonds so purchased shall be certified by the trustees and issued to such purchaser.

Provided, always, that the purchase-money therefor shall be deposited to the credit of the trustees in some banking house in the city of New York or Philadelphia, to be named by both the purchasers and the trustees, which said purchase-money shall be used only in payment for iron and equipment of said railroad, at a rate not to exceed the sum of twenty thousand dollars for each mile of the said railroad upon
162 which the work of grading, bridging, and tieing shall have been completed, and be paid from time to time as the said work shall progress, upon written directions of the trustees.

In witness whereof the said Davenport and S't Paul Railroad Company hath caused these presents to be sealed with its common seal and to be subscribed by its president and secretary, and the said John Edgar Thomson and William Dennison have hereunto set their hands and seals the day and year first above written.

GEO. H. FRENCH, *President.*
[SEAL.] W. H. PRICE, *Secretary.*
J. EDGAR THOMSON,
W. DENNISON, *Trustees.*

Signed, sealed, and acknowledged in the presence of—
W'M M. SPACKMAN,
HENRY C. SPACKMAN, as to J. Edgar Thomson.
163 G. MOODIE, T. J. JANNEY, as to William Dennison.

STATE OF IOWA,
Scott County:

Be it remembered that on this sixteenth day of March, A. D. 1872, before me, a notary public in and for Scott County, Iowa, duly qualified, personally came Geo. H. French, president, and William H. Price, secretary of the Davenport and S't Paul Railroad Company, to me personally known to be the identical persons whose names are subscribed to the foregoing instrument, the one as president and the other as secretary of said company, and severally acknowledged the same to be their voluntary act and deed and the voluntary act and deed of said company.

164 Witness my hand and notarial seal the day and year last above written.

[SEAL.] H. A. H. PLAYTER,
Notary Public, Scott County, Iowa.

STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

Before me, the undersigned, a notary public for the city of Philadelphia, in the State of Pennsylvania, duly commissioned and qualified, personally came the within-named J. Edgar Thomson, trustee, and a party of the second part in the foregoing indenture, and who is personally known to me as the person who signed the same as such, and acknowledged that he did sign, seal, and execute the same, for the uses and purposes therein mentioned, as his voluntary act and deed.

165 In witness whereof I have hereunto set my hand and affixed my notarial seal the seventh day of March, A. D. 1872.

[SEAL.] HENRY C. SPACKMAN,
Notary Public.

STATE OF OHIO,
Franklin County, ss:

Before me, the undersigned, a notary public of the State of Ohio, in and for said Franklin County, personally appeared the within-named William Dennison, trustee, and a party of the second part in the foregoing indenture, and who is personally known to me as the person who signed the same as such, and acknowledged that he did sign, seal, and execute the same for the uses and purposes therein mentioned as his voluntary act and deed.

In witness whereof I have hereunto affixed my hand and notarial seal this fourteenth day of March, A. D. 1872.

[SEAL.] T. J. JANNEY,
Notary Public in and for Franklin County, Ohio.

166 EXHIBIT F.

Memorandum of an agreement made this twenty-ninth day of February, eighteen hundred and seventy-two, between the Davenport and S't Paul Railroad Company, of the first part, and the Davenport Railway Construction Company, of the second part, witnesseth:

Whereas the contract between the parties hereto made May twelfth, (1871) eighteen hundred and seventy-one, does not provide for the party of the second part furnishing any rolling-stock for the use of said road, the said party of the second part agrees to furnish such rolling-stock as shall be necessary for local traffic, the same to be subject to the first-mortgage bonds, and to hold the cost and interest on same as a claim against the Davenport and S't Paul Railroad Company for future payment.

167 This agreement is supplementary to said contract of May twelfth (12th), eighteen hundred and seventy-one (1871).

(Signed) DAVENPORT AND S'T PAUL R. R. CO.,
By GEO. H. FRENCH, *President.*

(Signed) DAVENPORT R'Y CONSTRUCTION CO.,
By B. E. SMITH, *President.*

Witnesses:
(Signed) A. CARNEGIE.
(") M. DONAHUE.

EXHIBIT G.

Articles of agreement concluded this first day of October, A. D. 1873, by and between the Western Car Company, party of the first part, and the Davenport and S't Paul Railroad Company, party of the second part, witnesseth:

That for and in consideration of the promises and agreements of the said second party, hereinafter mentioned, the said first party
168 hereby hires to said second party ninety (90) railroad-cars as follows, viz: eighty (80) box-cars, Nos. 121 to 200 inclusive, and ten (10) stock-cars, Nos. 301 to 310 inclusive, said ninety (90) cars having been the property of the Western Car Company Association, and by them delivered to the party of the second part at dates previous to February 15th, 1873, as per receipts of said second party; and the ownership of said cars having afterward been transferred to the party of the first part, all of said cars being marked "W." It is understood and agreed by the parties hereto that the said ninety (90) cars are to be used

by said second party, in its regular business of transportation over its own and other railroads, for the term of five years from the date of the contract, which shall be renewed on the expiration of said five years, on like agreements and conditions as those of this contract, upon the
169 request of either of the parties hereto, a written notice of such request to be given by the party making it on the other party not less than one year previous to the expiration of said five years. In consideration whereof the said second party hereby promises and agrees:

First. To pay the said first party, as rental for the use of each of said cars, twenty dollars for each and every month during the existence of the contract and its renewal, if renewed; said payments to be made to such person on behalf of said first party as it shall designate in writing from time to time, and, until otherwise so designated, to the secretary of said first party; and the receipts of such payments of said person so designated or said secretary of said first party, as the case may be, shall be the only evidence of such payments said first party shall require of said second party therefor.

170 Second. In case any of the said cars shall be destroyed or so disabled by accident or otherwise as to be unfit for safe and proper use at any time during the existence of this contract, or the renewed contract, if renewed, the said second party shall, at its own expense, immediately replace such destroyed or disabled cars with an equal number of like cars of equally good material, construction, and value, in all respects, as were those so destroyed or disabled before the destruction or disabling of the same, and shall have said replacing cars numbered, lettered, and marked as were the said destroyed or disabled cars. Each and all of said replacing cars shall become and be the property of said party of the first part, the same as were the destroyed or disabled cars they shall have replaced.

171 Third. The said second party shall at its own expense maintain and keep each and all of said ninety (90) cars during the existence of this contract and its renewal, if renewed, in good repair and in safe and proper running order, and at its own expense furnish all the material for and make all renewals of said cars from time to time as they shall be needed to put and keep them in proper condition for regular use, said material to be in every respect equal in quality to the material for like purposes originally used in the construction of said cars; at the termination of this contract, or the renewed contract, if renewed, return said cars to the party of the first part in proper condition and repair for the immediate and active use thereof. It being understood and agreed between the parties to this contract that said second
172 party may and hereby reserves the privilege of purchasing said cars at any time during the existence of this contract, or the renewal thereof, if renewed, by paying or securing to be paid to said first party, to its satisfaction, the original cost thereof. It is understood and agreed between the parties hereto that to preserve the evidence of the ownership of said cars in the said first party they shall be severally marked or lettered as follows, viz, "W," which shall be in addition to any marking or lettering of said cars said second party may make for its convenience. In case the said second party shall fail at any time during the existence of this contract, or the renewed contract, if renewed, to promptly pay the interest on the principal of any of its bonds or other liabilities when the same shall have respectively become due, the said first party may, if it so elect, terminate this contract
173 immediately after such default, by written notice of the president of said first party to the president or secretary of said second

party, personally served on said president or secretary, or sent to either of them by the United States mail; and the said second party agrees on the service of said written notice as aforesaid to deliver forthwith to said first party the actual possession, as the owner thereof, of each and all of said ninety (90) cars, and those with which said second party shall have replaced the same, each and all of which cars shall on such delivery be in proper condition and repair for the immediate and active use thereof.

[SEAL.] THE WESTERN CAR COMPANY,
By B. E. SMITH, *President.*

Attest:
E. C. SMITH, *Secretary.*

[SEAL.] THE DAVENPORT AND S'T PAUL R. R. CO.,
By GEO. H. FRENCH, *President.*

Attest:
J. S. CONNER, *Secretary.*

174 EXHIBIT H.

Article of an agreement made and entered into this 12th day of May, A. D. 1871, between the Davenport Railway Construction Company, a corporation organized under the laws of the State of Iowa, of the first part, and the Davenport and S't Paul Railroad Company, a corporation organized and existing by the same authority, of the second part, witnesseth:

That the said construction company, for and in consideration of the covenants and stipulations hereinafter contained to be performed by the said railroad company, will furnish all the iron and material necessary for the building and furnishing of the Davenport and S't Paul Railroad,
175 with its stations, side tracks, shops, depots, turn-tables, and water-tanks, from Eldridge Junction, in Scott County, Iowa, to S't Paul, in the State of Minnesota, or such intermediate point as connections of a satisfactory character can be made, to form a line to S't Paul; the iron, spikes, and all other material, to be of as good quality as that now in said railroad from Davenport to Maquoketa, and to do all these things as fast as the road-bed is properly graded, bridged, and tied, with right of way and depot grounds, with stock at par.

The said railroad company agrees to prepare and finish the grading and bridging of said line of road and furnished the ties for the same, with right of way and depot grounds, the cost of which is to be represented by stock at par, and to pay to the said construction company twenty thousand ($20,000) dollars per mile in the bonds of said railroad
176 company, which bonds shall be twenty (20) year seven per cent. gold bonds, free of government tax, with the interest payable semi-annually in the city of New York, on the first days of January and July; said bonds to be secured by a first mortgage on all the property and franchises of said railroad company. And in further consideration also agrees to issue and deliver to said construction company five (5) per cent. over and above one-half of all the stock that has been or may be issued by said Davenport and S't Paul Railroad Company, so that said construction company will have a controlling interest in said stock. The bonds of said railroad company shall be issued as follows, to wit:

When (5) five miles of said road are ironed and finished, with the proper buildings, stations, turn-tables, side tracks, water-tanks, &c., then $100,000 of the bonds of said railroad company, properly exe

177 cuted, shall be delivered to the said construction company, and so on from time to time as fast and as often as another five miles shall be so finished, so that the said car company shall receive $100,000 of said bonds for every five miles of said railroad so finished and ready for operation as aforesaid.

All the bonds of said company, amounting to six millions ($6,000,000), shall be duly executed by said Davenport and S't Paul Railroad Company, and be placed in escrow or trust with the Farmers' Loan and Trust Company, in the city of New York, subject to delivery to said car company under the terms and conditions of this contract, when certified by the president of the railroad company and the president of the car company. And it is further understood and agreed that if the construction company can sell or dispose of the whole or part of said bonds in advance of the actual completion of any of the sections of said
178 road, said construction company may sell and dispose of the same, but all proceeds derived therefrom shall be paid into the said trust company and be held by it at current deposit rates of interest, and said proceeds shall only be paid out rateably, from time to time, as each five miles of road are ready for business, as hereinbefore provided for the delivery of bonds. That is, the proceeds of each $100,000 of bonds and deposit interest thereon shall be paid over for each five miles of road completed.

And if it should occur that all of said miles of road representing the whole of said six (6) millions of bonds under this contract should not be constructed, then all proceeds remaining with said Trust Company, whether in bonds or cash, shall revert to the Davenport and S't Paul Railroad Company.

It is understood that the entire indebtedness of the Davenport
179 and S't Paul Railroad Company does not exceed $50,000, and the said company agrees that so much of the first payment of said construction company as may be required shall be applied to the purchase of iron and other material now in possession of said railroad company, and the payment so made to said railroad company shall be used to pay and liquidate all of said indebtedness.

Witness our hands this 13th day of May, A. D. 1871.

DAVENPORT RAILWAY CONSTRUCTION COMPANY,
By B. E. SMITH, *President.*
DAVENPORT AND S'T PAUL RAILROAD CO.,
By H. PRICE, *President.*

(Endorsed:) Filed May 4th, 1875. George B. Corkhill, clerk.

180 On the same day, to wit, May 4, 1875, there was issued from said clerk's office a subpœna in chancery to William Dennison et al., which said subpœna is in the words and figures following, to wit:

181 *Subpœna in chancery.*

UNITED STATES OF AMERICA,
District of Iowa, ss:

The President of the United States to William Dennison and the Western Car Company, the Delaware Railroad Construction Company:

We command you and each of you that you appear before the judge of the circuit court of the United States for the district of Iowa, at Des Moines, on the first Monday of June, it being the seventh day of June

next (A. D. 1875), to answer to the substituted bill of complaint of Lewis H. Meyer in case of Moses De Witt Loomis vs. D. and S't P. R'y Co. et al. this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Iowa, returnable to the June rule-day, it being Monday, the seventh day of June, A. D. 1875.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the U. S., at Des Moines, this the 4 day of May, A. D. 1875, and of the Independence the 99th year.

[SEAL.] GEORGE B. CORKHILL,
Clerk U. S. C. C., District of Iowa.

Memorandum.

The within-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at Des Moines aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against them as confessed, and a decree entered thereon accordingly.

[SEAL.] GEORGE B. CORKHILL,
Clerk U. S. C. C., District of Iowa.

182 Afterwards, to wit, on the 5th day of June, 1875, said subpœna in chancery was returned by the marshal of said district, and filed in said clerk's office in said cause, with the following return of service endorsed thereon, to wit:

183 (Indorsed:) No. 552. Subpœna in chancery. Circuit court of the United States, district of Iowa. Moses De Witt Loomis vs. D. and S't P. R'y Co. et al. Returnable to rule-day, first Monday in June, A. D. 1875. Corkhill, clerk. Filed June 5th, A. D. 1875. George B. Corkhill, clerk. Grant & Smith, comp't's sol. 820.

This writ came into my hands for service on the twenty-first day of May, A. D. 1875, and I served the same on the within-named The Delaware Railroad Construction Company on the 24th May, A. D. 1875, by reading the same to R. Eddy, the treasurer of the said Delaware R. R. Construction Company, and by delivering a true copy of the same to the said R. Eddy at Delhi, in the county of Delaware, and State of Iowa.

J. W. CHAPMAN,
U. S. Marshal,
By H. ABEL,
Spec. Deputy, District of Iowa.

Marshal's fees: Mileage, 260 miles, $15.60; service on, $2.00; copy, $ .50—$18.10.

I hereby appoint H. Abel a special deputy to serve this writ.
(S'g'd) J. W. CHAPMAN,
U. S. M., Ette.

184 Afterwards, to wit, on the 4th day of May, 1875, there was issued from said clerk's office a subpœna in chancery to the Dav-

enport & S't Paul Railway Company and others, which said subpœna is in the words and figures following, to wit:

185 *Subpœna in chancery.*

UNITED STATES OF AMERICA,
District of Iowa, ss:

The President of the United States to the Davenport & S't Paul Railway Company, the Davenport Railway Construction Company, the Delaware Construction Company:

We command you and each of you that you appear before the judge of the circuit court of the United States for the district of Iowa, at Des Moines, on the first Monday of June, it being the seventh day of June next (A. D. 1875), to answer to the substituted bill of complaint of Lewis H. Meyer in the case of Moses De Witt Loomis against said Davenport & S't Paul Railway Company et al., this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Iowa: returnable to the June rule-day, it being Monday, the seventh day of June, A. D. 1875.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the U. S., at Des Moines, this the 4 day of May, A. D. 1875, and of the Independence the 99th year.

[SEAL.] GEORGE B. CORKHILL,
Clerk U. S. C. C., District of Iowa.

Memorandum.

The within-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at Des Moines aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against them as confessed, and a decree entered thereon accordingly.

[SEAL.] GEORGE B. CORKHILL,
Clerk U. S. C. C., District of Iowa.

186 Afterwards, to wit, on the 8th day of May, 1875, the said subpœna was returned by the marshal of said district, and filed in said clerk's , with the following return of service endorsed thereon, to wit:

187 (Indorsed:) No. 552. Subpœna in chancery. Circuit court of the United States, district of Iowa. Moses De Witt Loomis vs. Davenport & S't P. R. R. Co. et al. Returnable to rule-day, first Monday in June, A. D. 1875. Corkhill, clerk. Filed May 8, A. D. 1875. George B. Corkhill, clerk. Grant & Smith, comp't's sol.

This writ came into my hands for service on the 7th day of May, A. D. 1875, and I served the same on the within-named The Davenport & S't Paul Railway Company May 7, 1878, by reading the same to J. S. Conner, who is the secretary & treasurer of said Davenport & S't Paul Railway Company, and by delivering a true copy to J. S. Conner, said sec. & treasurer, at Davenport, in the county of Scott, and State of Iowa.

J. W. CHAPMAN,
U. S. Marshal,
H. LEONARD,
Special Deputy.

Marshal's fees: Mileage, 180 miles, $10.80; service on, $4.00; copy, $1.00—$15.80; $2.00 fee.

Served this writ same date, to wit, on the 7th day of May, A. D. 1875, upon the within-named The Davenport Railway Construction Company by reading the same to J. M. Brown, who is the gen'l sup't of said Davenport Railway Construction Company, and by delivering a true copy to the said J. M. Brown, at Davenport, in the county of Scott, and State of Iowa.

J. W. CHAPMAN,
U. S. Marshall,
By H. LEONARD,
Special Deputy.

The Delaware Construction Company not found in Scott Co., Iowa.

188 Afterwards, to wit, on the 2d day of June, 1875, the Delaware Railroad Construction Company, by J. M. Brayton, its attorney, filed its precipe for appearance in said cause, which said precipe is in the words and figures following, to wit:

189 *Præcipe for appearance.*

In United States circuit court, district of Iowa.

MOSES DE WITT LOOMIS, PLAINTIFF,
vs.
THE DAVENPORT & S'T PAUL RAILROAD Company et al., defendant.
No. 552. June 7, 1875. Rule day.

The clerk of said court will please enter my appearance for the Delaware Railroad Construction Company, defendants in above cause, at suit of Lewis H. Meyer.

J. M. BRAYTON,
Solicitors for said Defendants.

Filed June 2, 1875.

GEORGE B. CORKHILL, *Clk.*

190 Afterwards, to wit, on the 27th day of July, 1875, said Delaware Railroad Construction Company, by its said attorney, filed in said clerk's office its answer in said cause, which said answer is in the words and figures following, to wit:

191 *Answer by the Del. Railroad Construction Company.*

Circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS
vs.
THE DAVENPORT & S'T PAUL RAILROAD COMPANY et al.

To the judges of the circuit court of the United States for the district of Iowa:

1. This defendant, the Delaware Railroad Construction Company, not

waiving any objection to the substituted bill of complaint filed in this suit, for answer thereto denies that John Edgar Thompson, named in said bill, departed this life on the 22nd day of May, A. D. 1874.

192 2. This defendant denies that said Meyers was appointed trustee, as stated in said bill, and denies that a copy of said appointment is annexed to said bill of complaint.

3. This defendant denies that the deeds or mortgages mentioned in said bill of complaint were executed and delivered to said William Dennison and John Edgar Thompson, and denies that copies of said deeds or mortgages are annexed to said bill.

4. This defendant denies that the lien of said deeds or mortgages, or either of them, is prior to that of this defendant.

5. This defendant denies the allegation that its judgment and judgment sale was not rendered and made in accordance and as

193 required by the statute of Iowa.

6. This defendant says that on or about the sixth day of August, A. D. 1870, this defendant entered into a contract to grade, bridge, and furnish ties for that portion of the Davenport & S't Paul Railroad lying in Delaware County, Iowa; that this defendant commenced work under said contract, which was made with the Davenport & S't Paul Railroad Company, and fully complied with said contract on the part of this defendant; that after the completion of said contract this defendant filed in the office of the clerk of the district court of Delaware County, Iowa, a statement for a mechanic's lien; that in the

194 month of January, A. D. 1874, this defendant brought suit in the circuit court of Delaware County, Iowa, against said D. & S't Paul Railroad Company and William Dennison and John Edgar Thompson, trustees for said bondholders; and in the month of February, A. D. 1874, judgment and decree was rendered against said railroad company, and said cause was continued as to said Dennison & Thompson; that on the 4th day of May, A. D. 1874, under said judgment and decree establishing a mechanic's lien in favor of this defendant, all of said D. & S't Paul Railroad, lying in Delaware County, was sold to R. Eddy, in trust for this defendant, by the sheriff of Delaware County, Iowa; that the same was sold for the sum of $53,100.00; that a

195 supplemental petetion was filed in said suit, and on the 22nd day of May, A. D. 1874, decree was rendered against said Dennison and Thompson, trustees in said suit, foreclosing their right of redemption, and declaring the lien of this defendant paramount to that of said Dennison and Thompson, trustees; that in February, A. D. 1875, said William Dennison appeared in said court and obtained an order for a retrial of said suit; that the same was retried at the May term of said court, A. D. 1875, and the former judgment and decree affirmed, all of which will more fully appear by reference to a copy of the record in said suit, a copy thereof being hereto annexed, marked Exhibit "A,"

196 and made a part of this answer, and reference is hereby made to said Exhibit A.

7. And further, defendant says that all of said road, including roadbed, right of way, track, side-tracks, depots, depot grounds, and all fixtures lying in Delaware County, Iowa, were sold under appraisement to enforce said mechanic's lien on said 4th day of May, by the sheriff of said county, and the same was not redeemed from said sale by said railroad company, or any other party.

II.

8. And for further defense, and as a plea in bar of this suit, this de

fendant says that the authorized capital stock of the Davenport & S't Paul Railroad Company, a corporation organized under the laws of the State of Iowa, did not exceed three millions of dollars; that by
197 the laws of said State, and the articles of incorporation of said railroad company, the amount of indebtedness authorized was limited to two-thirds of said capital stock; that the said mortgage deed and bonds on their face disclose a violation of said laws of Iowa and of said articles of incorporation, and the same are null and void; and the holders of said bonds are not bona fide owners for value thereof; that said bonds and deeds or mortgages were fraudulently and unlawfully issued, and are null and void.

Wherefore this defendant asks to be hence dismissed with costs of suit, for which it prays a decree of this court.

(Signed) J. M. BRAYTON,
198 *Solicitor for the Del. Railroad Construction Company, def't.*
J. M. BRAYTON, *of Counsel.*

EXHIBIT A.

Petition to enforce mechanic's lien.

THE DELAWARE RAILROAD CONSTRUCTION Company *against* THE DAVENPORT & S'T PAUL RAILROAD Company, John Edgar Thompson & William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, & Lucius Howard. } No. 1141.

On this sixth day of February, A. D. 1874, this cause came on for hearing upon the defendant's motion for a reference, the plaintiff, the Delaware Railroad Construction Company, appearing by J. M.
199 Brayton, and the defendant, the Davenport and S't Paul Railroad Company, appearing by Peters and Heath, and the motion for a reference is overruled, and the court proceeds to receive evidence in the cause, when by agreement of the parties, to wit, the plaintiff and the Davenport and S't Paul Railroad Company, the case as to these parties is referred to Henry Harger, esq., who appears in open court and accepts the appointment of referee, with power to examine witnesses, books, and papers, and accounts, and upon the findings of said referee being reported to the judge of this court a judgment, by agreement of said parties in open court, is to be entered of the amount due, and a decree for a mechanic's lien to be made establishing such lien, the
200 hearing to commence on Monday morning, Feb'y 9th, 1874, at nine o'clock a. m., at the office of said Harger, in Delhi, Iowa, and to continue from day to day until completed.

And by said agreement of said parties the judgment is to be entered as of the last day of this January term, 1874, of this court, and the case is by order of court continued as to all of the defendants except said Davenport and S't Paul Railroad Company.

The said referee having in accordance with said agreement and said order taken the proper oath, and proceeds with the hearing and examination of said cause, and having filed his report upon the 14th day of February, 1874, with the approval of the said judge to whom the same

had been submitted, in accordance with said agreement and the
201 findings of said referee and order of said judge the following judgment and decree is entered:

It is ordered, adjudged, and decreed that the defendant, the Davenport and S't Paul Railroad Company, pay to said plaintiff the sum of fifty-one thousand nine hundred and thirty dollars and fifty-four cents, and costs of suit, taxed at dollars, the said sum first above mentioned being the sum found by said referee to be due to said plaintiff from said defendant on the said 6th day of February, A. D. 1874, and judgment for said sum and costs is rendered against said defendant, the Davenport and S't Paul Railroad Company, and in favor of said plaintiff, to bear interest at the rate of six per cent. per annum.

202 It is further ordered, adjudged, and decreed that a mechanic's lien be established in favor of said plaintiff upon the following property of the defendant, to wit, the portion of the Davenport & S't Paul Railroad lying between south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of way, the road-bed, the track, depot buildings, side-tracks, and land on which the same are situated, and all fixtures connected with said grounds and buildings, and all the right, title, and interest of said defendant in and to the land upon which said improvements are situated, said lien to date from the 29th (twenty-ninth) day of September, A. D. 1870, and to continue in force against said Daven-
203 port and S't Paul Railroad Company, and all persons claiming liens or rights to said property from said railroad company subsequent to that date, until final payment of said judgment and costs.

It is also ordered, adjudged, and decreed said lien be enforced against said property, and that a special execution issue against said property, and that plaintiff have a general execution against any other property of said defendant, the Davenport and S't Paul Railroad Company, for the payment of said judgment, costs, and accruing costs.

It appearing from the pleadings and the report of the referee that Westphal, Hinds & Co., at the October term of the district court of Delaware County, Iowa, obtained a judgment for work done by
204 S. Denton & Co. for the present plaintiff upon said railroad, and that a mechanic's lien was established by said judgment for $2,531.38:

It is ordered, adjudged, and decreed that in case said Davenport and S't Paul Railroad Company shall pay said judgment of Westphal, Hinds & Co., or any part thereof, such payment shall operate as a payment upon the judgment in this suit, and it appearing from the report of said referee that the stock subscriptions, promissory notes, and taxes mentioned in defendants' answer were not received by F. B. Doolittle, treasurer of plaintiff, it is decreed that plaintiff is not entitled to account therefor.

And this cause is continued as to all the defendants except said Davenport and S't Paul R. R. Co.

Thus decreed this 6th day of February, A. D. 1874.

205 THE DELAWARE RAILROAD CONSTRUCTION COMPANY
vs.
THE DAVENPORT AND S'T PAUL RAILROAD COMPANY, JOHN EDGAR THOMPSON AND WILLIAM DENNISON, TRUSTEES FOR CERTAIN BONDHOLDERS OF SAID RAILROAD, THE DAVENPORT RAILWAY CONSTRUCTION COMPANY, AND LUCIUS HOWARD. } No. 1141. Equity.

This cause is called for hearing, when, upon motion of plaintiff, the case is dismissed as to the defendant, Lucius Howard, and it appearing to the court from the inspection of the record and the proofs in the case that the original notice in this case had been served upon the defendants, the Davenport Railway Construction Company, and John Edgar Thompson and William Dennison, trustees for certain boldhold-
206 ers of said railroad, more than ten days previous to the first day of the court, they having failed to answer are adjudged to be in default.

And upon hearing and considering the proofs submitted by plaintiff the court finds the allegations of the original, amended, and supplemental petitions to be true.

It is therefore considered, ordered, and adjudged that plaintiff have the relief asked for in said petitions, and the mechanic's lien be established as against the above-named defendants upon the property described in the former decree in this case at the February term, A. D. 1874, and as therein established against said Davenport & S't Paul Railroad Company, and that said defendants be forever barred and foreclosed from all right of redemption of, in, or to the said prop-
207 erty, and every part thereof, and that the rights of plaintiff be declared to be superior and paramount to any and all claims or rights of said defendants to the same or any part thereof. Thus decreed this 22d day of May, A. D. 1874.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thompson, and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard. } No. 1141. Equity.

Now, on this 26th day of January, 1875, comes William Den-
208 nison, the surviving trustee for certain bondholders of the Davenport and S't Paul Railroad Company, who were defendants in the above-entitled cause, and files with the clerk of this court a motion for a new trial in said cause on behalf of the said William Dennison, surviving trustee as aforesaid, and brings into court a bond for security for costs of retrial of said cause, as required by the statu'e in such cases made and provided, and offers to be filed the answer of the said surviving trustee, William Dennison. Whereupon, it appearing to the court that the service upon the said surviving trustee was by publication only, and that he and those whom he represents are entitled to a new trial under the law; and it further appearing to the court that the said surviving trustee has furnished security for costs of new
209 trial herein satisfactory to said plaintiff, it is ordered by the court that a new trial in this cause be granted to the said surviving trustee, William Dennison, that the answer offered by the said defendant be filed, and that this cause stand continued to the next term of this court.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thompson, and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard. } No. 1141. Equity.

Now on this 17th day of May, A. D. 1875, this cause comes on
210 for hearing on motion of plaintiff's attorney to strike defendant's answer from the files, and after hearing the arguments of counsel, and the court being fully advised in the premises, it is ordered by the court that said answer be stricken from the files; whereupon plaintiff, by its attorney, files a motion for default to be taken against said defendants.

THE DELAWARE R. R. CONSTRUCTION Company
vs.
THE DAVENPORT & S'T PAUL RAILROAD Company and John Edgar Thomson and William Dennison, trustees for certain bondholders of said railroad, The Davenport Railway Construction Company, & Lucius Howard. } No. 1141. Equity.

211 Now on this 19th day of May, A. D. 1875, defendant, William Dennison, asks leave to file an amended answer, and leave is granted by the court.

THE DELAWARE R. R. CONSTRUCTION Company
vs.
THE DAVENPORT & S'T PAUL RAILROAD Company and John Edgar Thomson and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard. } No. 1141. Equity.

Now on this 20th day of May, A. D. 1875, this cause coming on for hearing on the motion of plaintiff to strike from the files in this cause the amended answer of William Dennison, trustee, the same is
212 submitted to the court upon arguments of counsel, and the court being fully advised in the premises said motion is sustained. Whereupon defendants, by their attorney, files a motion for continuance. Said motion is overruled by the court.

THE DELAWARE R. R. CONSTRUCTION Company
vs.
THE DAVENPORT & S'T PAUL RAILROAD Company, John Edgar Thomson, and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard. } No. 1141. Equity.

On this 21st day of May, A. D. 1875, this cause was called for

213 hearing, when Lewis H. Meyer asks leave to be made a defendant in the case; no sufficient evidence of his appointment as trustee being produced, his application is overruled.

Plaintiff introduces in evidence the contract described in petition. Defendant asks leave to file an amended petition and bond for removal to U. S. circuit court. Plaintiff objects that it is to' late; should have been made before, and cause now reached and on trial. Objection sustained by the court. Defendant excepts. Defendant offers bond on to file. Plaintiff files objections to application to transfer cause to U. S. circuit court; shows that one surety on the bond is an attorney and objects to him, and that the bond is not good or sufficient, and filed too late. Objections sustained.

Defendant asks time to present a new bond. Plaintiff objects.
214 Time refused by the court. Defendant excepts. With leave of court plaintiff files a reply. Defendant objects, and excepts to filing the reply.

Court adjourned to May 22.

On this May 22, 1875, defendant files a motion that court proceed no further with the cause, but allow defendant time to file a new bond or deposit security for costs. Motion overruled. Defendant excepts, and asks leave to file an amendment to his answer. Leave is granted, and the defendant, William Dennison, trustee, files an amendment to his former answer. Trial proceeds upon the issue made, J. M. Brayton, esq., appearing for the plaintiff, and Grant and Fisher for William Dennison, trustee, &c.

After both parties have introduced their evidence and rested,
215 and the cause submitted by consent of parties in open court, it is agreed that the court may take the case under advisement, and that upon the filing of his decision, although in vacation, judgment and decree shall be rendered and entered as of this May term of this court.

And the court finds the issues in favor of plaintiff, and files and renders his decision that plaintiff's lien is paramount to that of defendant, and orders judgment in favor of said plaintiff.

It is therefore ordered and adjudged and decreed that the lien of said plaintiff is paramount to that of the defendant, William Dennison, trustee, &c., and it is ordered, adjudged, and decreed that the former decree and judgment of this court, rendered at the May term, A.
216 D. 1874, be confirmed, and that the plaintiff's claim for a mechanic's lien as prayed in his petitions, be established as against the said defendants upon the property described in the decree in this suit at the February term of this court, A. D. 1874, and as therein established against the Davenport and S't Paul Railroad Company, and that the defendants be forever barred and foreclosed of and from all right of redemption in or to said property, and every part thereof, and that the rights of plaintiff be declared to be superior and paramount to any and all claims and rights of said defendants to the same or any part thereof, and that the defendant, William Dennison, trustee, &c., pay the costs of the retrial of this suit.

Thus decreed this 22d day of May, A. D. 1875.

STATE OF IOWA,
Delaware County, ss:

217 I, J. B. Satterlee, clerk of the circuit court in and for said county, do hereby certified that the above and foregoing are full,

true, and complete copies of all record entries in the action in which the same are entitled as fully as the same remains of record in my office.

Witness my hand and the seal of said court hereto attached this 28th day of June, 1875.

[SEAL.] J. B. SATTERLEE,
Clerk Circuit Court.

(Endorsed:) Moses De Witt Loomis vs. D. & S't Paul R. Co. et al. Answer by the Del. R. Con. Co. Filed July 27, 1875. George B. Corkhill, clerk. J. M. Brayton, att'y for def't.

218 Afterwards, to wit, on the 14th day of August, 1875, said Lewis H. Meyer, by his said attorneys, filed in said clerk's office his replication in said cause; which said replication is in the words and figures following, to wit:

219 *Replication.*

In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS
vs.
THE DAVENPORT & S'T PAUL RAILROAD COMPANY & others.

Now comes Lewis H. Meyer, and reserving all and all manner of advantage of exce'tion to the manifold insufficiencies of the answer of the Delaware Railroad Construction Company, for replication to the same states that its said bill is certain, true, and sufficient in law to be answered unto; that the said answer is uncertain, untrue, and insufficient in law to be replied unto, without this, that anything in said answer contained material to be replied unto, confessed and
220 avoided, traversed or denied, is true.

And this complainant will prove his said bill to true and sufficient in law, and prays as by it he has already prayed.

GRANT & SMITH,
For Lewis H. Meyer.

(Endorsed:) In the circuit court of the United States for the district of Iowa. Moses De Witt Loomis vs. Davenport & S't Paul R. R. Co. & others. Replication to ans. of Del. R. R. Const. Co. Filed Aug. 14, 1875. George B. Corkhill, cl'k. Grant and Smith, for Meyers.

221 Afterwards, to wit, on the 2d day of September, 1875, there was issued from said clerk's office in said cause a subpœna in chancery to Delaware County Railroad Company; which said subpœna is in the words and figures following, to wit:

222 *Subpœna in chancery.*

UNITED STATES OF AMERICA,
District of Iowa, ss:

The President of the United States to Delaware County Railroad Company:

We command you and each of you that you appear before the judge of the circuit court of the United States for the district of Iowa, at Des Moines, on the first Monday of October, it being the fourth day of Octo-

ber next (A. D. 1875), to answer to the bill of complaint of Lewis H. Meyer, filed in case of Moses De Witt Loomis v. Davenport & S't Paul Railway Co. et al. in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Iowa. Returnable to the October rule day, it being Monday the 4 day of October, A. D. 1875.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the U. S., at Des Moines, this the 2 day of September, A. D. 1875, and of the Independence the 100th year.

[SEAL.] GEORGE B. CORKHILL,
Clerk U. S. C. C., District of Iowa.

Memorandum.

The within-named defendant is notified that unless it enter its appearance in the clerk's office of said court, at Des Moines aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against it as confessed and a decree entered thereon accordingly.

[SEAL.] GEORGE B. CORKHILL,
Clerk U. S. C. C., District of Iowa.

223 Afterwards, to wit, on the 15th day of September, 1875, said subpœna was returned and filed in the said clerk's office with the following acceptance of service endorsed thereon:

224 STATE OF IOWA,
Delaware County, ss:

I, J. M. Holbrook, president of the Delaware County Railroad Company, hereby admit due and legal service upon said company of the within subpœna, and that a copy thereof was delivered to me as an officer of said company, at Delaware County, Iowa, on this 7th day of September, A. D. 1875.

(S'g'd) J. M. HOLBROOK,
President of Delaware County Railroad Company.

(Indorsed:) Spa. to Delaware Co. R. R. No. . Subpœna in chancery. Circuit court of the United States, district of Iowa. Loomis vs. D. & S't P. R'y Co. et al. Returnable to rule day first Monday in Oct., A. D. 1875. Corkhill, clerk. Filed Sep. 15, A. D. 1875. George B. Corkhill, clerk. Grant & Smith, comp't's sol.

225 And on the 3d day of Sept., 1875, said defendant, by its said attorney, filed in said clerk's office its præcipe for appearance in said cause, which is in the words and figures following, to wit:

226 *Præcipe for appearance.*

In United States circuit court, district of Iowa.

MOSES DE WITT LOOMIS, PLAINTIFF,
vs.
D. AND S'T P. RAILWAY CO. AND OTHERS, defendants. } No. 552.

September rule day, 1875.

The clerk of said court will please enter my appearance for the Del-

aware County Railroad Company and Le Roy Jackson and C. T. Peet, defendants in above cause.

(S'g'd) J. M. BRAYTON,
Solicitor for said Defendants.

(Endorsed:) Loomis vs. D. and S't P. R'y Co. Præ. for app. of Delaware Co. R. R., Le Roy Jackson, C. T. Peet, by J. M. Brayton. Filed Sep. 3, 1875. George B. Corkhill, clerk.

227 On the 24th day of September, 1875, the said Delaware Co. R. R. Co., by its said attorney, filed in said clerk's office in said cause a notice, which said notice is in the words and figures following, to wit:

228 To Lewis H. Meyer, and Grant and Smith, his att'ys:

SIRS: You are hereby notified that at two o'clock, a. m. on the second day of the next term of the United States circuit court for the district of Iowa, to be held at Des Moines in October A. D. 1875, application by petition will be made to said court for an order upon John E. Henry, receiver of the Davenport and S't Paul Railroad, in the suit originally commenced in said court by Moses De Witt Loomis against the Davenport and S't Paul Railroad Company and others, to deliver to the Delaware County Railroad Company that portion of said Davenport and S't Paul Railroad lying in Delaware County, Iowa, and for the payment by said receiver of the sum of seven thousand dollars for the use and occupation of that portion of said road, or in lieu thereof for leave to said Delaware County Railroad Company to bring suit to recover said property and
229 said sum of seven thousand dollars from said receiver; said application will be made to said court by the Delaware County Railroad Company, and you are notified that an order to said receiver to show cause why the above relief should not be granted has been issued by the Hon. J. M. Love, judge of said court, and said receiver therein directed to show cause at the time and place above stated.

(Signed) J. M. BRAYTON,
Attorney for Delaware County Railroad Co.

Due service of the above notice is hereby admitted upon us, at the city of Davenport, Iowa, on this 17th day of August, A. D. 1875.

(S'g'd) GRANT AND SMITH,
Attorneys for Meyer.

(Endorsed:) In the matter of petition of Del. Co. R. Co. Notice to L. H. Meyer. No. 552. Filed Sep. 24, 1875. George B. Corkhill.

230 To the Davenport and S't Paul Railroad Company and Brown, Campbell and Gould, att'ys for said railroad company:

You are hereby notified that at two o'clock p. m. on the second day of the next term of the United States circuit court for the district of Iowa, to be held at Des Moines in October A. D. 1875, application by petition will be made to said court for an order upon John E. Henry, receiver of the Davenport and S't Paul Railroad, in the suit originally commenced in said court by Moses De Witt Loomis against the Davenport and S't Paul Railroad Company and others, to deliver to the Delaware County Railroad Company that portion of said Davenport and S't Paul Railroad lying in Delaware County, Iowa, and for the payment by said receiver of the sum of seven thousand dollars, for the use and oc-

cupation of that portion of said road, or in lieu thereof for leave to said Delaware County Railroad Company to bring suit to recover said
231 property and said sum of seven thousand dollars from said receiver; said application will be made to said court by the Delaware County Railroad Company, and you are notified that an order to said receiver to show cause why the above relief should not be granted has been issued by the Hon. J. M. Love, judge of said court, and said receiver therein directed to show cause at the time and place above stated.

(Signed) J. M. BRAYTON,
Attorney for Delaware County Railroad Company.

Due service of the foregoing notice upon me as an officer and director of the Davenport and S't Paul Railroad Company is hereby admitted to have been made on this 30th day of September, A. D. 1875.

(S'g'd) F. B. DOOLITTLE,
Director of Davenport and S't Paul Railroad Company.

(Endorsed:) In the matter of the petition of the Delaware County Railroad Company. Notice of motion to show cause. Filed Oct. 15, 1875. George B. Corkhill, clerk.

232 On the same day, to wit, there was entered on the records of said court an order in said cause, which said order is in the words and figures following, to wit:

233 To John E. Henry, receiver of the property of the Davenport & S't Paul Railroad Company:

On the petition of the Delaware County Railroad Company, you are ordered to show cause before the United States circuit court for the district of Iowa, on the 2nd day of the next term A. D. 1875, at two o'clock p. m., why that portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including road-bed, right of way, track, depot buildings, side tracks, and land on which the same are situated, and all fixtures connected with said grounds
234 and buildings and all the right thereto held by the Davenport & S't Paul Railroad Company subsequent to the 29th day of September, A. D. 1870, should not be delivered to said Delaware County Railroad Company and why payment by you of the sum of seven thousand dollars should not be ordered to be made as compensation for the use and occupation of said property and as damages for withholding the same from said Delaware County Railroad Company since the 4th day of May, A. D. 1875, or in lieu of the relief above prayed for, that you show cause, at the time and place above named, why said petitioner should not have leave granted by said court to bring some proper action or suit for said property.

(S'g'd) J. M. LOVE, *Judge.*

235 STATE OF IOWA,
Scott County:

I hereby admit due service of the foregoing order upon me at the city of Davenport, Iowa, on this 30th day of August, A. D. 1875.

(S'g'd) JOHN E. HENRY,
Receiver.

(Endorsed:) In the matter of the petition of the Del. Co. R. R. Co.

Order to John E. Henry, receiver, to show cause. Filed Sep. 24, 1875. George B. Corkhill, clerk.

236 On the same day, to wit, Sep. 24, 1875, said defendant, the Delaware Co. Railroad Company, by its said attorney, filed in said clerk's office its petition in said cause, which said petition is in the words and figures following, to wit:

237 In the matter of the petition of the Delaware County Railroad Company.

To the judges of the circuit court of the United States for the district of Iowa:

Your petitioner, the Delaware County Railroad Company, shows:

1. That said petitioner is a corporation duly organized under the laws of the State of Iowa, with its principal place of business at Delhi, Delaware County, Iowa.

2. That on the day of March, A. D. 1875, in a suit then pending in the circuit court of the United States for the district of Iowa, wherein Moses De Witt Loomis was plaintiff and the Davenport and S't Paul Railroad Company and others were defendants, John E. Henry, by an order then duly made by the Hon. James M. Love, was appointed
238 receiver of the Davenport and S't Paul Railroad, a railroad extending from the vicinity of the city of Davenport, in Scott County, Iowa, to the village of Fayette, in Fayette County, Iowa, and running through the county of Delaware, in said State.

3d. That said petitioner is the sole and absolute owner of the following-described property situated in Delaware County, Iowa, to wit: That portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of way, the road-bed, track, depot buildings, side-tracks, and land on which the same are situated, and all fixtures connected with said grounds and buildings, and all the right, title, and interest heretofore held by the Davenport and S't Paul Railroad Company in and to the lands upon which said improvements are situated, at any time subsequent to the 29th day of
239 September, A. D. 1870. That said petitioner is entitled to the present and immediate possession of said property, and has been entitled to such possession from the fourth day of May, A. D. 1875.

4th. That your petitioner's right and title has the following foundation, to wit:

On or about the sixth day of August, A. D. 1870, the Davenport and S't Paul Railroad Company, a corporation organized under the laws of Iowa, made a contract with the Delaware Railroad Construction Company, a corporation organized under the laws of Iowa, for grading and furnishing material for that portion of the Davenport and S't Paul Railroad lying between the south and north lines of said Delaware County. Said construction company completed said work and furnished said materials on or about the month of October, A. D. 1872, and afterwards brought suit in the circuit court of Delaware County, Iowa, to
240 establish a mechanic's lien upon said property, and made parties defendant The Davenport and S't Paul Railroad Company, John Edgar Thompson and William Dennison, trustees of bondholders of said railroad company, and the Davenport Railway Construction Company. And on the 6th day of February, A. D. 1874, said court ren-

dered a decree against said railroad company establishing a mechanic's lien on said property, and continued said cause as to the other defendants, against whom a decree was rendered at the succeeding term of said court, on the 22nd day of May, A. D. 1874, all of which will more fully appear by reference to a copy of the record of said court in said suit, marked "Exhibit A," and hereto annexed and made a part of this petition.

And a special execution founded on the judgment and decree against said railroad company was duly issued, under which said property
241 was duly sold by the sheriff of Delaware County, Iowa, to R. Eddy, trustee, who received a certificate of sale and also a deed of said property, copies of which, marked Exhibit "B" and "C," are hereto annexed and made a part of this petition; and on the 19th day of January, A. D. 1875, said R. Eddy, trustee, executed a deed conveying said property to your petitioner, a copy of said deed, marked Exhibit "D," and made a part of this petition, is hereto annexed; and on the 20th day of January, A. D. 1875, said R. Eddy, trustee, assigned to your petitioner said certificate of sale, a copy of said assignment being annexed to said Exhibit B; and on the tenth day of May, A. D. 1875, the sheriff of said Delaware County, Iowa, duly executed and delivered to your petitioner a deed of said property, a copy of which is hereto annexed, marked Exhibit E, and made a part of this petition. And all of said deeds were duly acknowledged and recorded in the office
242 of the recorder of Delaware County, Iowa, on the days shown in the certificates endorsed thereon as shown by said exhibits. And by virtue of said judgment, decrees, sale, and conveyances, your petitioner became and was entitled to the possession of said property from the fourth day of May, A. D. 1875, to the present time, and still is entitled to such possession.

Your petitioner states that said John E. Henry, receiver as aforesaid, is unlawfully in the possession of said property, and from said fourth day of May, A. D. 1875, has unlawfully withheld, and still unlawfully withholds, possession of said property, to the damage of your petitioner in the sum of seven thousand dollars, including the use and occupation and damage to said property by the operation of said road. Your petitioner has demanded the possession of said property and the pay-
243 ment of said damage from said John E. Henry, and he has refused to pay the same or any part thereof, and he has refused to deliver the possession of said property to your petitioner. Your petitioner states that he has fully made known his case to his counsel, and is advised that he has a good and meritorious cause of action thereupon against said receiver. Wherefore your petitioner prays that said receiver may be ordered to pay to your petitioner said damage, and to deliver said property to your petitioner, or that leave to bring an action against said receiver to recover the same may be granted to your petitioner, and that such other and further relief may be granted as may be just.

(S'g'd) J. M. BRAYTON,
Attorney for Del. Co. Railroad Co., Petitioner.

(S'g'd) J. M. BRAYTON,
Of Counsel.

244 STATE OF IOWA,
County, ss:

I, Ancel E. Martin, being duly sworn, say that I am secretary and member of the board of directors of the Delaware County Railroad

Company, named in the foregoing petition; that I have read said petition and know its contents, and that the matters and things therein set forth, and the statements therein made, are true, as I verily believe.

(Signed) A. E. MARTIN.

Subscribed and sworn to, by Ancil E. Martin, before me and in my presence, on this 5th day of August, A. D. 1875.

(S'g'd) I. N TICHENOR,
U. S. Commissioner, District of Iowa.

245 EXHIBIT A.

Petition to enforce mechanic's lein.

THE DELAWARE RAILROAD CONSTRUCTION Company *against* THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thompson and William Dennison, trustees for certain bondholders of said railroad, The Davenport Railway Construction Company, and Lucius Howard. } No. 1141.

On this sixth day of February, A. D. 1874, this cause came on for hearing upon the defendants' motion for a reference; the plaintiff, The Delaware Railroad Construction Company, appearing by J. M. Brayton, and the defendant The Davenport and S't Paul Railroad Company appearing by Peters and Heath, and the motion for a reference is over-
246 ruled and the court proceeds to receive evidence in the cause, when by agreement of the parties, to wit, the plaintiff and the Davenport and S't Paul Railroad Company, the case as to these parties is referred to Henry Harger, esq., who appears in open court and accepts the appointment of referee, with power to examine witnesses, books, and papers, and accounts; and upon the findings of said referee being reported to the judge of this court, a judgment by agreement of said parties in open court, is to be entered of the amount due, and a decree for a mechanic's *lein* to be made establishing such *lein*; the hearing to commence on Monday morning, Feb. 9th, 1874, at nine o'clock a. m., at the office of said Harger, in Delhi, Iowa, and to continue from day to day until completed. And by said agreement of said parties the judgment, is to be entered as of the last day of this January term, 1874, of this court; and the case is by order of court, continued as to all of the defendants
247 except said Davenport and S't Paul Railroad Company. The said referee having in accordance with said agreement and said order taken the proper oath and proceeds with the hearing and examination of said cause, and having filed his report upon the 14th day of February, 1874, with the approval of the said judge, to whom the same had been submitted; in accordance with said agreement and the findings of said referee and the order of said judge, the following judgment and decree is entered:

It is ordered, adjudged, and decreed that the defendant The Davenport and S't Paul Railroad Company pay to said plaintiff the sum of fifty thousand nine hundred and thirty dollars and fifty-four cents, and costs of suit, taxed at dollars, the said sum first above mentioned being the sum found by said referee to be due to said plaintiff from said defendant on the said 6th day of February, A. D. 1874,
248 and judgment for said sum and costs is rendered against said de-

fendant The Davenport and S't Paul Railroad Company and in favor of said plaintiff, to bear interest at the rate of six per cent. per annum.

It is further ordered, adjudged, and decreed that a mechanic's *lein* be established in favor of said plaintiff upon the following property of the defendant, to wit, the portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of way, the road bed, the track, depot buildings, side tracks, and land on which the same are situated, and all fixtures connected with said grounds and buildings, and all the right, title, and interest of said defendant in and to the land upon which said improvements are
249 situated; said lien to date from the 29th (twenty-ninth) day of September, A. D. 1870, and to continue in force against said Davenport and S't Paul Railroad Company, and all persons claiming liens or rights to said property from said railroad company subsequent to that date, until final payment of said judgment and costs.

It is also ordered, adjudged, and decreed said lien be enforced against said property, and that a special execution issue against said property, and that plaintiff have a general execution against any other property of said defendant The Davenport and S't Paul Railroad Company for the payment of said judgment, costs, and accruing costs. It appearing from the pleadings and the report of the referee that Westphal, Hands and Co., at the October term of the district court of Delaware County, Iowa, obtained a judgment for work done by S. Denton and Co. for the present plaintiff upon said railroad, and that a mechanic's lien
250 was established by said judgment for $2,531.38:

It is ordered, adjudged, and decreed that in case said Davenport and S't Paul Railroad Company shall pay said judgment of Westphal, Hands & Co., or any part thereof, such payment shall operate as a payment upon the judgment in this suit, and it appearing from the report of said referee that the stock subscription, promissory notes, and taxes mentioned in defendant's answer were not received by F. B. Doolittle, treasurer of plaintiff, it is decreed that plaintiff is not entitled to account therefor, and this cause is continued as to all the defendants except said Davenport and S't Paul R. R. Co. Thus decreed this 6th day of February, A. D. 1874.

251 THE DELAWARE RAILROAD CONSTRUCTION COMPANY
vs.
THE DAVENPORT AND S'T PAUL RAILROAD COMPANY, John Edgar Thompson, and William Dennison, trustees for certain bondholders of said railroad, The Davenport Railway Construction Company, and Lucius Howard. } No. 1141. Equity.

This cause is called for hearing, when, upon motion of plaintiff, the case is dismissed as to the defendant Lucius Howard, and it appearing to the court, from the inspection of the record and the proofs in the case, that the original notice in this case had been served upon the defendants The Davenport Railway Construction Company, and John Edgar Thompson and William Dennison, trustees for certain bondholders of said railroad, more than ten days previous to the first day of the
252 court, they having failed to answer, are adjudged to be in default.

And upon hearing and considering the proofs submitted by

plaintiff, the court finds the allegations of the original amended and supplemental petitions to be true. It is therefore considered, ordered and adjudged that plaintiff have the relief asked for in said petitions, and the mechanic's lien be established as against the above-named defendants, upon the property described in the former decree in this case at the February term, A. D. 1874, and as therein established, against said Davenport and S't Paul Railroad Company, and that said defendants be forever barred and foreclosed from all right of redemption of, in, or to the said property, and every part thereof, and that the rights of plaintiff be declared to be superior and paramount to any and all claims or rights of said defendants to the same or any part thereof.

Thus decreed this 22nd day of May, A. D. 1874.

253 THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thompson, William Dennison, trustees for certain bondholders of said railroad, The Davenport Railway Construction Company, and Lucius Howard. } No. 1141. Equity.

Now, on this 26th day of January, 1875, comes William Dennison, the surviving trustee for certain bondholders of the Davenport and S't Paul Railroad Company, who were defendants in the above-entitled cause, and files with the clerk of this court a motion for a new trial in said cause on behalf of the said William Dennison, surviving trustee as aforesaid, and brings into court a bond for security for costs of retrial of said cause as required by the statute in such case made and provided, and offers to be filed the answer of the said surviving trustee, William Dennison. Whereupon it appearing to the court
254 that the service upon the said surviving trustee was by publication only, and that he and those whom he represents are entitled to a new trial under the law, and it further appearing to the court that the said surviving trustee has furnished security for costs of new trial herein satisfactory to said plaintiff, it is ordered by the court that a new trial in this cause be granted to the said surviving trustee, William Dennison; that the answer offered by the said defendant be filed, and that this cause stand continued to the next term of this court.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thompson, William Dennison, trustee for certain bondholders of said railroad; The Davenport Railway Construction Company, and Lucius Howard. } No. 1141. Equity.

255 Now, on this 17th day of May, A. D. 1875, this cause come on for hearing on motion of plaintiff's attorney to strike defendants' answer from the files, and after hearing the argument of counsel, and the court being fully advised in the premises, it is ordered by the court that said answer be stricken from the files. Whereupon plaintiff, by its attorney, files a motion for default to be taken against said defendants.

THE DELAWARE R. R. CONSTRUCTION COMPANY
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, and John Edgar Thompson and William Dennison, trustees for certain bondholders of said railroad; The Davenport Railway Construction Company, and Lucius Howard. } No. 1141. Equity.

Now, on this 19th day of May, A. D. 1875, defendant William Dennison asks leave to file an amended answer, and leave is granted by the court.

256 THE DELAWARE R. R. CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD COMPANY, and John Edgar Thompson and William Dennison, trustees for certain bondholders of said railroad; The Davenport Railway Construction Company, and Lucius Howard. } No. 1141. Equity.

Now, on this 20th day of May, A. D. 1875, this cause coming on for hearing on the motion of plaintiff to strike from the files in this cause the amended answer of William Dennison, trustee, the same is submitted to the court upon the arguments of counsel, and the court being fully advised in the premises, said motion is sustained. Whereupon defendants, by their attorney, files a motion for continuance; said motion is overruled by the court.

257 THE DELAWARE R. R. CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company John Edgar Thompson and William Dennison, trustees, for certain bondholders of said railroad; The Davenport Railway Construction Company and Lucius Howard. } No. 1141. Equity.

On the 21st day of May, A. D. 1875, this cause was called for hearing, when Lewis H. Meyer asks leave to be made a defendant in the case. No sufficient evidence of his appointment as trustee being produced, his application is overruled.

Plaintiff introduces in evidence the contract described in petition.

Defendant asks leave to file an amended petition and bond for removal to U. S. circuit court.

Plaintiff objects that it is too late, should have been made before, and cause now reached and on trial. Objection sustained by the court.

258 Defendant excepts.

Defendant offers bond on to file. Plaintiff files objection to application to transfer cause to U. S. circuit court; shows that one surety on the bond is an attorney, and objects to him, and that the bond is not good or sufficient, and filed too late. Objections sustained.

Defendant asks time to present a new bond. Plaintiff objects; time refused by the court. Defendant excepts.

With leave of court plaintiff files a reply. Defendants objects and excepts to filing the reply. Court adjourned to May 22d.

On this May 22d, 1875, defendant files a motion that court proceed no further with this cause, but allow defendant time to file a new bond or deposit security for costs. Motion overruled. Defendant excepts and asks leave to file an amendment to his answer. Leave is granted, and the defendant William Dennison, trustee, files an amendment to his former answer.

Trial proceeds upon the issue made, J. M. Brayton, esq., appear-
259 ing for the plaintiff, and Grant and Fisher for William Dennison, trustee, &c.

After both parties have introduced their evidence, and rested, and the cause submitted by consent of parties in open court, it is agreed that the court may take the case under advisement, and that upon the filing of his decision, although in vacation, judgment and decree shall be rendered and entered as of this May term of this court.

And the court finds the issues in favor of plaintiff, and files and renders his decision, that plaintiff's lien is paramount to that of defendant, and orders judgment in favor of said plaintiff.

It is, therefore, ordered and adjudged and decreed that the lien of said plaintiff is paramount to that of the defendant William Dennison, trustee, &c., and it is ordered, adjudged and decreed that the former decree and judgment of this court rendered at the May term, A. D. 1874, be confirmed, and that the plaintiff's claim for a mechanic's
260 lien as prayed in his petition be established as against the said defendants upon the property described in the decree in this suit at the February term of this court, A. D. 1874, and as therein established against The Davenport and S't Paul Railroad Company, and that the defendants be forever barred and foreclosed of and from all right of redemption in or to said property, and every part thereof, and that the rights of plaintiff be declared to be superior and paramount to any and all claims and rights of said defendants to the same or any part thereof, and that the defendant William Dennison, trustee, &c., pay the costs of the retrial of this suit.

Thus decreed this 22d day of May, A, D. 1875.

STATE OF IOWA,
Delaware County, ss :

I, J. B. Satterlee, clerk of the circuit court in and for said county, do hereby certify that the above and foregoing are full, true,
261 and complete copies of all record entries in the action in which the seme are entitled, as fully as the same remain of record in my office.

Witness my hand and the seal said court hereto attached this 28th day of June, 1875.

(S'g'd) J. B. SATTERLEE,
Clerk Circuit Court.

EXHIBIT B.

Copy of certificate of sheriff sale..

To whom it may concern :

I, Abner Dunham, sheriff of Delaware County, Iowa, hereby certify that, by virtue of a writ of special execution to me directed, dated February 17th, A. D. 1874, and issued out of the clerk's office of the Cir-

cuit Court of the State of Iowa in and for Delaware County, upon a judgment and decree rendered in said court on the 6th day of February, A. D. 1874, in favor of the Delaware Railroad Construction Company and against the Davenport & S't Paul Railroad Company, for the
262 sum of fifty-one thousand nine hundred and thirty $\frac{54}{100}$ dollars debt, and one hundred and twenty-one $\frac{30}{100}$ dollars cost, I did, on the 17th day of February, A. D. 1874, levy upon the following-described property, to wit:

All that portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of way, the road-bed, the track, depot building, side-tracks and land on which the same are situated, and all fixtures connected with said ground and buildings, and all the right, title, and interest of the said Davenport & S't Paul Railroad Company in and to the land upon which the said improvements are situated, as the property of the said Davenport and S't Paul Railroad Company, to satisfy the said special execution, amounting to fifty-one thousand nine hundred and thirty $\frac{54}{100}$ dol-
263 lars debt, and one hundred and twenty-one $\frac{30}{100}$ costs, together with interest and accruing costs thereon; that I gave four weeks' notice of the time and place of selling said above-described property under said execution by posting up three notices thereof at three public places in said county, one of which was at the court-house in Delhi, where the last district court was held, and by causing two publications of said notice to be made in the Delhi Monitor, a newspaper printed at Delhi, in said county, immediately before the time of sale.

That in pursuance of the notice of sale aforesaid, in conformity to law, and by virtue of said special execution, I did, on the 4th day of May, A. D. 1874, at 10 o'clock in the forenoon of said day, at the door of the court-house in Delhi, expose and offer the said property for sale at public auction; and R. Eddy, treas. of said plaintiff in trust for said plaintiff, then and there bid the sum of fifty-three thousand and
264 one hundred dollars for the same, and that being the highest and best bid offered for said property, the same was then and there openly struck off and sold to the said R. Eddy, treas. of plaintiff in trust for said plaintiff, for the sum of $53,100.00 dollars, who then and there paid the amount of his bid to me in cash.

Now, unless redemption is made within one year after date of said sale, according to law, the said R. Eddy, treas. in trust as aforesaid, his heirs or assigns, will be entitled to a deed for the said property sold as aforesaid and described as follows, to wit: All that portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of way, the road-bed, the track, depot buildings, side-tracks, and land on which the same are situated, and all fixtures connected with said grounds and buildings, and all
265 the right, title and interest of the Davenport and S't Paul Railroad Company in and to the land upon which the said improvements are situated.

In witness whereof I have hereunto set my hand this 4th day of May, A. D. 1874.

ABNER DUNHAM,
Sheriff of Delaware County, Iowa.

For value received I hereby assign to the Delaware County Railroad Company all my right, title, and interest to the within-described prop-

erty and certificate, and all the right, title, and interest of the Delaware Railroad Construction Company thereto, this January 20th, 1875.

(S'g'd) R. EDDY,
Trustee for the Del. Railroad Construction Co.

(Endorsed on the back :) Certificate of sheriff sale. Sheriff of Delaware County to R. Eddy, treas., in trust for Del. R. Con. Co. Deed made to the Delaware R. R. Co. May 10th, 1875. Abner Dunham, sh'iff Del. Co., Iowa.

266 EXHIBIT C.

Copy of deed.

This indenture, made the fourth day of May, A. D. 1874, by and between Abner Dunham, sheriff of Delaware County, Iowa, of the first part, and R. Eddy, treas., in trust for the Delaware Railroad Construction Company of Delaware Co., in the State of Iowa, of the second part, witnesseth:

That whereas, by virtue of a certain writ of execution issued from the office of the clerk of the circuit court of said Delaware County, on the 17th day of February, A. D. 1874, duly attested by said clerk, and under the seal of said court, directed to the sheriff of said county of Delaware, commanding him that of the goods, stocks, or interest in any company, debts due, property in the hands of third persons, lands, and tenements (which are not exempt by law from execution) of the
267 defendant, he, the said sheriff, should cause to be made, according to the statute in such case made and provided, the sum of fifty-one thousand nine hundred and thirty dollars and fifty-four cents, with interest and costs on a certain judgment recovered in said circuit court on the 6th day of February, 1874, in a suit therein pending, wherein the Delaware Railroad Construction Company was plaintiff and the Davenport and S't Paul Railroad Company and others were defendants; and whereas, by virtue of said writ of execution, the real estate hereinafter described was levied upon and taken as the property of the said defendant, The Davenport and S't Paul Railroad Company, on the 17th day of February, A. D. 1874, and advertised for sale, four weeks' notice of the time and place of said sale having been previously given, according to the statute in such case made and provided, by posting up a printed notice thereof at the court-house where the last district
268 and circuit courts was held, to wit, in the village of Delhi, in said county, and one in Oneida Township, a public place in the township where the said real estate is situated, and one in Milo Township, being three public places in said Delaware County, and by publishing a notice thereof for two consecutive weeks preceeding the day of sale in the Delhi Monitor, a newspaper published in the said county of Delaware, a copy of which notice being hereto attached;

And whereas said lands were on the 4th day of May, A. D. 1874, duly appraised as provided by law by two disinterested hous'holders, one of whom, to wit, William Price, was chosen by the plaintiff, and the other, Albert Boomer, was chosen by the clerk of the district court of Delaware County, Iowa, the defendant having failed to choose an appraiser after notice to choose an appraiser for three days given by said sheriff; the valuation of said lands by said appraiser was by them sworn
269 to, and the same was appraised as follows, at seventy-eight thousand three hundred and sixty-two dollars;

And whereas the said Abner Dunham, sheriff as aforesaid, did on

the 4th day of May, A. D. 1874, at the hour of ten o'clock in the forenoon of said day, at the door of the court-house in said county of Delaware, in conformity with the statute and in obedience to said writ of execution and the notice given as aforesaid, expose and offer for sale at public auction the real estate hereinafter described, and did then and there sell the same at public auction to R. Eddy, treas., in trust for the Delaware Railroad Construction Company, for the sum of fifty-three thousand and one hundred dollars, he being the highest bidder therefor, and that being the highest sum bid for the same:

Now, therefore, this indenture witnesseth:

That in consideration of the foregoing premises and of the
270 payment of said sum of fifty-three thousand and one hundred dollars bid by the said R. Eddy, treas. of and in trust for said plaintiff, and the further sum of one dollar for this conveyance to me in hand paid, the receipt whereof is hereby acknowledged,

I, the said Abner Dunham, sheriff as aforesaid, party of the first part, have bargained and sold, and by these presents do grant, bargain, sell, and convey unto the said R. Eddy, treas. of said plaintiff in trust for said plaintiff, party of the second part, his heirs and assigns forever, the following-described tract of real estate situated in the county of Delaware, and State of Iowa (being the same real estate hereinbefore referred to), to wit, all that portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of way, the road bed, the track, depot buildings, side
271 track, and land on which the same are situated, and all fixtures connected with said grounds and buildings, and all the right, title, and interest of the said Davenport and S't Paul Railroad Company in and to the land upon which the said improvements are situated.

To have and to hold the said real estate with all the appurtenances thereto belonging to the said second party, and to his heirs and assigns forever, as fully and absolutely as the said party of the first part by virtue of the foregoing premises, might and could sell and convey the same.

In witness whereof the said party of the first part has hereunto set his hand and seal this fourth day of May, A. D. 1874.

(Signed) ABNER DUNHAM,
Sheriff of Delaware County.

STATE OF IOWA,
Delaware County, ss:

272 Be it remembered that on this 4th day of May, A. D. 1874, before the undersigned, clerk of circuit court in and for said county of Delaware, personally came Abner Dunham, sheriff of Delaware County, Iowa, personally known to me to be the indentical person whose name is subscribed to the foregoing deed as grantor, and acknowledged the instrument to be his voluntary act and deed, and that as sheriff of Delaware County aforesaid he executed the same for the purpose therein mentioned.

Witness my hand and seal the day and year last above written.

[SEAL.] G. B. BEVERIDGE, *Clerk*,
By H. C. HEBBERLY, *Deputy*.

(Endorsed:) Sheriff's deed. Sheriff of Delaware County to R. Eddy, treas., in trust for D. R. Con. Co., State of Iowa, Delaware County. Filed for record the 8th day of May, A. D. 1874, at 10 o'clock a. m., and recorded in book H of town lot'. Deed record' on pages 350, 351,

352. Henry Hayes, recorder, by J. L. Stone, deputy. Entered for taxation May 8th, 1874. J. B. Baggs, auditor, by J. A. West, deputy. $1.00 paid.

273 EXHIBIT D.

Copy of deed.

Know all men by these presents that I, Rensselaer Eddy, treasurer of the Delaware Railroad Construction Company, and trustee for said company of the following-described property, for the consideration of fifty-three thousand nine hundred and seventy-four dollars and seventy-three cents, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto the Delaware County Railroad Company the following-described property, to wit:

All that portion of the Davenport and S't Paul Railroad situated in Delaware County, Iowa, being the part lying between the north line and south line of said Delaware County, as said road is laid and operated, including the right of way, the road-bed, the track, depot-buildings, side-tracks, and land on which the same are situated, and
274 all fixtures connected with said grounds and buildings, and all the right, title, and interest conveyed or received by me in or to the land upon which said improvements are situated, by virtue of a sale to me by the sheriff of Delaware County, Iowa, on the 4th day of May, A. D. 1874, under an execution against the Davenport and S't Paul Railroad Company; and I sell and convey to said Delaware County Railroad Company all the interest in or to any property derived by me at said sale, both legal and equitable.

To have and to hold unto *its* itself and its grantees forever.

Witness my hand this 19th day of January, A. D. 1875.

(S'g'd) RENSSELAER EDDY,
Treasurer and Trustee of the Delaware Railroad Construction Company.

STATE OF IOWA,
Delaware County, ss:

On this 19th day of January, A. D. 1875, before me, J. B. Sat-
275 terlee, clerk of the district court of Delaware County, Iowa, personally appeared Rensselaer Eddy, treasurer and trustee of and for the Delaware Railroad Construction Company, to me personally known to be the identical person whose name is affixed to the foregoing deed as grantor, and acknowledged the same to be his free and voluntary act and deed.

Witness my hand and official seal the date above written.

[SEAL.] (S'g'd) J. B. SATTERLEE,
Clerk of District Court of Delaware County, Iowa.

(Endorsed:) Rensselaer Eddy, treasurer and trustee of Del. Railroad Construction Company, to Delaware County Railroad Company. Deed. Filed for record the 19th day of January, A. D. 1875, at 4 p. m., and recorded in book H of town lots, on page 419. H. C. Jackson, recorder. Entered for taxation January 19th, 1875. J. B. Boggs, county auditor.

276 EXHIBIT E.

Copy of deed.

This indenture, made the tenth day of May, A. D. 1875, by and be-

tween Abner Dunham, sheriff of Delaware County, Iowa, of the first part, and the Delaware County Railroad Company, of the county of Delaware, in the State of Iowa, of the second part, witnesseth:

That whereas, by virtue of a special execution directed to Abner Dunham, the then acting sheriff of Delaware County, Iowa, dated the seventeenth day of February, A. D. 1874, and issued out of the clerk's office of the circuit court of the State of Iowa in and for Delaware County, under the seal of said court, upon a judgment and decree rendered in said circuit court on the 6th day of February, A. D. 1874, in favor of the Delaware Railroad Construction Company and against the Davenport and S't Paul Railroad Company, for the sum of fifty-one thousand nine hundred and thirty ($51,930) dollars and fifty-four
277 ($\frac{54}{100}$ c't) cents debt and one hundred twenty-one (121\frac{30}{100}$) dollars and thirty cents costs, the said Abner Dunham, sheriff as aforesaid, did, on the seventeenth day of February, A. D 1874, levy upon the real estate hereafter described as the property of the said Davenport and S't Paul Railroad Company, defendant, to satisfy the said special execution, amounting to fifty-one thousand nine hundred and thirty dollars and fifty-four cents debt and one hundred twenty-one dollars and thirty cents costs, together with interest and accruing costs; and whereas the said Abner Dunham, sheriff as aforesaid, gave four weeks' notice of the time and place of selling said real estate under said execution, by posting up written and printed notices thereof at three public places in said Delaware County, one of which was at the court-
house in Delhi, where the last district court was held, and by caus-
278 ing *to* publication of said notice to be made in the Delhi Monitor, a newspaper printed at Delhi, in said county, immediately preceding the day of sale; and whereas the said Abner Dunham, as sheriff aforesaid, in pursuance of the notice of sale aforesaid, in conformity to law and by virtue of said execution and the written notice of the defendant that he elected to have said real estate sold subject to redemption, did, on the 4th day of May, A. D. 1874, at the hour of ten o'clock in the forenoon of said day, at the door of the court-house in Delhi, expose and offer for sale at public auction the real estate hereinafter described, and did then and there sell the same at public auction to R. Eddy, treasurer of said plaintiff, in trust for said plaintiff, for the sum of fifty-three thousand one hundred dollars, he being the highest and best bidder therefor.

Whereupon the said sheriff, after receiving the said sum of money
from said purchaser, made and delivered to him a certificate of
279 sale as directed by law; and whereas the time allowed by law for redeeming said premises having expired without any redemption thereof having been made, and the said plaintiff, the Delaware Railroad Construction Company, did, on the 20th of January, A. D. 1875, assign said certificate of sale to the Delaware County Railroad Company, in words and figures following, to wit:

For value received I hereby assign to the Delaware County Railroad Company all my right, title, and interest to the within-described property and certificate, and all the right, title, and interest of the Del. Railroad Construction Company thereto, this January 20th, 1875.

(S'g'd) R. EDDY,
Trustee for Del. Railroad Construction Co.

Now, therefore, this indenture witnesseth:

That in consideration of the premises and of the said sum
280 of fifty-three thousand one hundred dollars, so bid and paid as

aforesaid, the receipt whereof is hereby acknowledged, I, the said Abner Dunham, sheriff as aforesaid, party of the first part, do hereby sell and convey unto the said Delaware County Railroad Company, party of the second part, his heirs and assigns forever, the following described real estate, situated in the county of Delaware and State of Iowa (being the same real estate hereinbefore referred to), to wit, all that portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of way, the roadbed, the track, depot buildings, side tracks, and land on which the same are situated, and all the fixtures connected with said grounds and buildings, and all the right, title, and interest of the said Davenport and S't Paul Railroad Company in and to the land upon which the said improvements are situated, to have and to hold the said real estate, with all the appurtenances thereto belonging, to the said Delaware County Railroad Company, its heirs and assigns, forever, as fully and absolutely as the said party of the first part by virtue of the premises might and could sell and convey the same.

281

In witness whereof the said party of the first part has hereunto set his hand this tenth day of May, A. D. 1875.

(S'g'd) ABNER DUNHAM,
Sheriff of Delaware County, Iowa.

STATE OF IOWA,
Delaware County, ss:

Be it remembered that on this tenth day of May, A. D. 1875, before the undersigned, a , in and for said county, came Abner Dunham, to me personally known to be the identical person whose name is subscribed to the foregoing sheriff's deed as grantor, and acknowledged the instrument to be his voluntary act and deed, and that he executed the same for the purposes therein mentioned.

282

Witness my hand and official seal the day and year last above written.

[SEAL.] (S'g'd) J. B. SATTERLEE,
Clerk Circuit Court.

STATE OF IOWA,
Delaware County, ss:

Be it remembered that on this 19th day of July, A. D. 1875, before the undersigned, a clerk of the district court in and for said county, came Abner Dunham, to me personally known to be the identical person whose name is subscribed to the foregoing sheriff's deed as grantor, and acknowledged the instrument to be his voluntary act and deed, and that he executed the same for the purposes therein mentioned.

283

Witness my hand and official seal the day and year last above written.

(Signed) J. B. SATTERLEE,
Clerk District Court, Del. Co., Iowa.

(Endorsed:) Sheriff's deed. Sheriff of Delaware County to Delaware County R. Co., State of Iowa. Delaware County. Entered for taxation this 13th day of May, A. D. 1875. (S'g'd) J. B. Boggs, auditor, by T. A. Twist, deputy. Transfer fee, $\$_{100}^{25}$, paid. Filed for record this 13th day of May, A. D. 1875, at 5 o'clock p. m., and recorded in book L of sheriff's deeds, on page 9. H. C. Jackson, recorder, deputy.

Recording fee, $1.00, paid by Chas. Harger.
Filed for record this 20th day of July, 1875, at 8.00 o'clock a. m., and recorded in book L, on page 10 of sheriff's deeds.
(S'g'd) H. C. JACKSON,
Recorder.

Rec. fee, $1.00, paid by A. E. Martin.

(Endorsed:) In the matter of the petition of the Delaware County Railroad Company. Petition. Filed Sep. 24, 1875. George B. Corkhill, clerk.

284 STATE OF IOWA,
Polk County, ss:

I, Ancil E. Martin, being duly sworn, say that I am secretary of the Delaware County Railroad Company; that previous to the 20th day of January last I was and still am a member of said company; that said company purchased and paid for that part of the Davenport and S't Paul Railroad lying in Delaware County, Iowa, previous to the month of August, A. D. 1875; that the price paid therefore was the amount named in the deed to said company from R. Eddy, a copy of which is annexed to the petition filed by said company in the office of the clerk of the United States circuit court for the district of Iowa, to obtain an order on John E. Henry, receiver, to deliver said portion of said railroad to said company; that a demand of said John E. Henry, as receiv-
285 er, was made by said company on the 4th of August, A. D. 1875, for the portion of said road above mentioned, and said demand was refused.

Deponent further says that said Delaware County Railroad Company was not made a party defendant to the suit in said U. S. circuit court entitled Moses DeWitt Loomis vs. The Davenport and S't Paul Railroad Company and others, until after the order to show cause why said portion of said railroad should not be delivered to said Del. Co. Railroad Company had been served upon said Henry, as receiver; and deponent is informed and believes said suit of the Delaware Railroad Construction Company vs. the Davenport and S't Paul Railroad Company and others, including William Dennison, trustee, is not now and never was pending in said U. S. circuit court—
(Signed) A. E. MARTIN.

Subscribed and sworn to by Ancil E. Martin before me on this 12th day of October, A. D. 1875.
GEORGE B. CORKHILL, *Clerk.*

(Endorsed:) Aff. of A. E. Martin. Filed Oct. 12, 1875. George B. Corkhill, clerk.

286 On the 31 day of August, 1875, said defendants Lewis H. Meyer, by his said attorneys, filed in said clerk's office his answer in said cause, which said answer is in the words and figures following, to wit:

287 In the circuit court of the United States for the district of Iowa.
In the matter of the petition of the Delaware County Railroad Company—

Now comes John E. Henry, receiver of the property of the Davenport and S't Paul Railroad Company, and Lewis H. Meyer, and for cause of

not delivering up said property and paying the said sum in said petition mentioned states to the court—

That on the first day of July, 1871, the Davenport and S't Paul Railroad Company executed to John Edgar Thompson and William Dennison, as trustees, a certain mortgage or deed of trust upon all the property of every description then in existence or thereafter to be acquired of the said company, to secure the payment of certain bonds. That upwards of three million dollars in amount of said bonds have been
288 issued and are now outstanding.

That on the 17th day of December, 1874, one Moses DeWitt Loomis, alleging himself to be the holder of ($5,000) five thousand dollars in amount of said bonds, brought suit to foreclose the mortgage upon said railroad and property.

That in said suit on the 17th day of March, 1875, the said John E. Henry was appointed by the United States circuit court for the district of Iowa receiver all the property, rights, credits, and effects of the said railroad company.

That said Henry was appointed such receiver in the place and stead of George H. French, who was appointed receiver of the property and effects aforesaid upon the 19th day of December, 1875.

And then defendants further say, that the Delaware County Railroad Company holds its title to the property in its petition claimed under an assignment made to it by the Delaware Railroad Construction
289 Company, of all its right, title, and interest in and to the same, on the 20th day of January, A. D. 1875. That the said Delaware Railroad Construction Company obtained a judgment and established a machanic's lien in the circuit court of Delaware County, Iowa, against the Davenport and S't Paul Railroad Company. And afterwards, to wit, on the 24th day of May, 1874, said judgment and machanic's lien was obtained by said company against said Thompson and Dennison, as trustees for the holders of said bonds, by default.

That on the 26th day of January, 1875, the said Dennison appeared in said cause, and the default therein was set aside. That upon the 20 day of May, 1875, the said Dennison filed his answer in said cause, which said answer was approved by the court. That prior to that and on the 19th day of May, 1875, before any issue had been made in said cause between the plaintiff, the Delaware Railroad Construction
290 Company and the said Dennison as defendant, the said Dennison had filed his petition, and also his bond, with good and sufficient security, for a transfer of said cause to the circuit court of the United States for the district of Iowa, and that the said suit between the said Delaware Railroad Construction Company and said Dennison is now pending in the said circuit court of the United States. That the said Dennison claims a prior and superior lien under and by virtue of the said mortgage or deed of trust to that of the said Delaware Railroad Construction Company, and that said company is entitled to no lien whatever upon the property of the Davenport and S't Paul Railroad Company as against him and the bondholders whom he represents.

That on the 16th day of March, 1875, Lewis H. Meyer, as successor to John Edgar Thompson, dec'd, one of the trustees in the mort-
291 gage aforesaid, was allowed by the said circuit court of the United States to become a party complainant in the said cause of Loomis vs. The Davenport and S't Paul Railroad Company and others. That the said Meyer on the 8th May, 1875, filed his bill to foreclose the said mortgage, wherein he made the said Delaware Railroad Construction Company a party defendant; that the said Meyer has amended said bill

making the said Delaware County Railroad Company a party defendant thereto; that the said Delaware County Railroad Company can set up all its rights in the said suit of Loomis and Meyer by way of cross-bill; that the said Henry, as receiver of the Davenport and S't Paul Railroad Company, is now in possession of all the property and franchises of said company, and is holding the same adversely to all claims of the said Delaware County Railroad Company, and neither said Henry as
292 receiver, nor Dennison, Thompson and Meyer as trustees, were any parties to the judgment under which said property was sold and under which plaintiff claims, and they are not bound to surrender said property upon the mere order of this or any other court.

GRANT AND SMITH,
Solicitors for Meyer and Henry.

(Endorsed:) In the circuit c't of the United States for the district of Iowa. Matter of the petition of the Delaware Co. R. R. Company. Answer of Meyer and Henry. Filed Aug. 31, 1875. George B. Corkhill, clerk. Grant and Smith, for Henry and Meyer.

293 On the 4th day of October, 1875, the said Delaware Co. R. R. Co., by its said attorney, filed in said clerk's office its answer to the amended and substituted bill of Lewis H. Meyer, in said cause, which said answer is in the words and figures following, to wit:

294 In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company and others.

Answer of the Delaware County Railroad Company to the substituted and amended bill of complaint of Lewis H. Meyer.

To the judges of the circuit of the United States for the district of Iowa:

The defendant, the Delaware County Railroad Company, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections contained in the substituted and amended bill of complaint of Lewis H. Meyer, filed in
295 the above-entitled suit, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for it to answer, denies that John Edgar Thompson in said bill of complaint mentioned, as trustee, departed this life on the 22nd day of May, A. D. 1874. This defendant, answering, says that the said Thompson since the rendition of the decree of the circuit court of Delaware County, Iowa, mentioned in complainant's bill, as this defendant is informed and believes, died, but the precise date of his death is unknown to this defendant.

2. This defendant, answering, says it has not sufficient knowledge or information to form a belief whether said Lewis H. Meyer has been appointed trustee of the mortgage or deed of trust named in said bill or not; the only knowledge or information thereof on the part of
296 this defendant being the allegation in said bill, and so this defendant demands strict proof thereof.

3. This defendant, answering, says that the lien of the mortgages or

deeds of trust mentioned in said plaintiff's bill is not prior or paramount to the interest of this defendant in the portion of the Davenport and S't Paul Railroad lying in Delaware County, Iowa, neither is said lien prior or paramount to the lien of the judgment of the Delaware Railroad Construction Company against the Davenport and S't Paul Railroad Company, rendered in the circuit court of Delaware County, Iowa.

4. Defendant, answering, denies the allegation that the lien of said last-named judgment and the interest of this defendant are such as cannot be enforced against said bondholders, also the allegations that said judgment and the sale under it were not rendered and made as required by the statutes of Iowa.

297 5. This defendant answering says that it "has no knowledge or information, except the allegations thereof in said bill, and not sufficient knowledge or information to form a belief of the truth of the allegations in said bill made, that said William Dennison is not now performing the duties of a trustee under said mortgage," and that said Dennison has been removed, and that "he has no authority further to act as such."

6. This defendant answering admits that it claims title to some of the property described in plaintiff's bill, and the mortgage therein referred to; the portion so claimed being that lying in Delaware County. Defendant admits that the title claimed by it is founded on a judgment in the Delaware County circuit court rendered in February, A. D. 1874, in favor of the Delaware Railroad Construction Company. Defend-

298 ant admits that it was based on a mechanic's lien and that on the judgment in said suit the property included in it was sold May 4th, A. D. 1874.

Defendant admits in said suit in said circuit court decree was rendered against Thompson and Dennison, trustees, on the 22nd day of May, 1874.

Defendant admits that said Dennison obtained a retrial in said suit; that said Delaware circuit court rendered judgment against said Dennison, and that he has appealed the same to the supreme court of the State of Iowa.

7th. Defendant answering denies that said Dennison and Meyer made a proper application under the act of 1875 to transfer said cause to this court; denies that they filed a petition therefor; denies that they filed a bond with adequate security for costs for such removal.

Defendant admits that said Delaware circuit court refused to

299 accept a bond offered; that it proceeded to retry said cause, and rendered judgment against Dennison, but denies that the same was contrary to law; denies that the acts of said court in refusing to transfer and in trying said cause were contrary to law; denies that they were null and void.

Defendant denies that the claim of said Delaware Railroad Construction Company, and of this defendant, is now fully before this court by the transfer of said cause; denies that said cause has been transferred to this court, and denies that any acts of the State court in trying the same are null and void.

8. Defendant answering denies that plaintiff's mortgage, or that in said bill mentioned, is a prior lien to that of the Delaware Railroad Construction Company. Defendant denies that Delaware Railroad Construction Company waived any right to a lien as contractors under their contract referred to in their petition; denies that said last-named

300 company agreed to take certain parties in Delaware County subscribers to stock of said Davenport and S't Paul Railroad Com-

pany and others for the payment of the work to be done and done under their contract, and denies that this appears by a copy of said contract set out in said records and proceedings.

9th. This defendant admits it is a purchaser of the portion of said road lying in Delaware County, but denies the allegation that it is a purchase without payment of value; denies that it is a mere trustee for the Delaware Railroad Construction Company; denies the allegation that it paid no money or other valuable consideration for the transfer of said property to it, and the allegations that it has no better or superior equities to said Delaware Railroad Construction Company.

10. Defendant answering says that on or about the sixth day of August, A. D. 1870, said Delaware Railroad Construction Company
301 entered into a contract with the Davenport and S't Paul Railroad Company to grade, bridge, and furnish ties for that portion of said railroad lying in Delaware County; that said Delaware Railroad Construction Company commenced work under said contract on or about the 29th day of September, A. D. 1870, and fully complied with the terms of said contract on its part, and graded, bridged, and furnished ties for that part of said road lying in said Delaware County, and performed the work and furnished the materials for said portion of said road required in said contract on and before the 31st day of October, A. D. 1872.

11. And on the 20th day of December, A. D. 1872, said Delaware Railroad Construction Company filed in the office of the clerk of the district court of said Delaware County a statement for a mechanic's lien on said portion of said road in the manner provided by the statutes of Iowa.

302 12. This defendant says that in the month of January, A. D. 1874, said Del. R. Con. Co. brought suit upon said contract against said D. and S't Paul Railroad Company and John Edgar Thompson and William Dennison, trustees for certain bondholders, in the circuit court of Delaware County, Iowa, to enforce a mechanic's lien upon the part of said road lying in Delaware County; that in February, A. D. 1874, or *or* about the 6th day of said month, said court rendered judgment against said railroad company, established a mechanic's lien on the portion of said road in Delaware County, and continued the suit as to said Thompson and Dennison until the next term of said court.

13. Defendant says that a special execution issued upon said judgment, under and by virtue of which all of that portion of the Davenport and S't Paul Railroad lying in said Delaware County was, on the
303 4th day of May, A. D. 1874, sold by the sheriff of Delaware County, Iowa, to R. Eddy, trustee for the plaintiff in said suit. Afterwards a supplemental petition was filed in said suit, and on the 22nd day of May, A. D. 1874, a decree was rendered in said suit against said Thompson and Dennison, trustees, foreclosing their right of redemption in said portion of said road, and declaring the lien of the plaintiff in said suit paramount to that of said Thompson and Dennison, trustees, all of which will more fully appear by reference to a copy of the record in said suit, marked Exhibit "A," annexed to the answer of said Delaware Railroad Construction Company filed in this suit, to which reference is hereby made, and said copy of said record is made a part of this answer.

14th. And defendant says that in the month of January, A. D. 1875, on or before the nineteenth day thereof, this defendant purchased said property, so deeded to R. Eddy in trust, for the sum of fifty-three
304 thousand nine hundred and seventy-three cents; said property being the portion of said road lying in Delaware County, was sold

to this defendant by said Delaware Railroad Construction Company for said amount; and this defendant purchased the same in good faith for said amount, which was paid in full to said Del. Railroad Construction Company; that said Eddy has assigned to this defendant the certificate of sale executed to him by said sheriff at the time of said sheriff's sale thereof, and has also executed to this defendant a deed of said property; and said sheriff, at said sale in May, 1874, executed to said R. Eddy a deed of said property, which was duly recorded in the office of the recorder of said Delaware County, all of which will more fully appear by reference to copies of said deeds and certificate of sale annexed to a petition filed in this court by this defendant to obtain an order on
305 the receiver in this suit to deliver to this defendant possession of said property, to which reference is hereby made, and said copies, marked respectively Exhibits "B," "C," "D," and "E," annexed to said petition, are hereby referred to and made a part of this answer, the originals of which this defendant is ready to produce as this court may direct.

15th. And defendant says that about six miles of said road, being the part extending north from the Illinois Central Railroad to the north line of Oneida Township, in said Delaware County, was sold in the year A. D. 1874, by the sheriff of said county, upon a judgment in favor of Westphal, Hinds and Co. against said Davenport and S't Paul Railroad Company and others, rendered by the district court of Delaware County, Iowa, in a suit brought to enforce a mechanic's lien thereon, which was established by said court; and this defendant on the tenth day of
306 June, A. D. 1875, paid to the clerk of said court the sum of twenty-nine hundred and dollars to redeem said portion of said road from said sale upon said judgment of Westphal, Hinds and Co., which was a paramount lien to that of said trustees of said bondholders.

16th. And defendant made all of said payments in good faith and so purchased and paid for said property the amounts hereinbefore stated without notice of any rights or claims on the part of said trustees of said bondholders.

17th. And for further answer, and as a plea in bar of this suit, this defendant says that by the articles of incorporation of said Davenport and S't Paul Railroad Company the authorized capital stock of said company was limited to the sum of three millions of dollars; that by the laws of said State of Iowa, and said articles of incorporation, said
307 railroad company being a corporation organized under the laws of the State of Iowa, the amount of indebtedness authorized was limited to two-thirds in amount of said capital stock, and the creation of an indebtedness of more than two millions of dollars by said Davenport and S't Paul Railroad Company was a violation both of said articles of incorporation and of said statute of Iowa.

Defendant says that said mortgage or deed of trust, and the supplemental mortgages or deeds of trust mentiond in said petition, on their face disclose a violation of said statute and said articles, and the same are null and void; that the holders of said bonds had due notice thereof and they are not bona fide holders thereof for value; that said bonds and mortgages or deeds were unlawfully and fraudulently issued, and are null and void in the hands of the holders thereof.

Wherefore this defendant prays to be hence dismissed with his
308 costs and charges in this suit sustained.

(Signed) J. M. BRAYTON,
Solicitor for Del. Co. Railroad Company.

(S'g'd) J. M. BRAYTON,
Of Counsel.

STATE OF IOWA,
Delaware County, ss:

I, J. M. Holbrook, being duly sworn, say that I am president of the Delaware County Railroad Company and hold the office of director of said company; that I have read the foregoing answer and know its contents, and that the matters and things therein set forth and statements therein made are true as I verily believe.

(Signed) J. M. HOLBROOK.

Subscribed and sworn to by J. M. Holbrook before me this 30th day of September, A. D. 1875.

(S'g'd) J. B. BAGGS,
U. S. Commissioner.

(Endorsed:) Moses DeWitt Loomis vs. D. and S't Paul R. Co. et al. Answer by Del. Co. R. Co. Filed Oct. 4, '75. Corkhill, clerk.

309 On the same day, to wit, Oct. 4, 1875, said Delaware R. R. Construction Company, by its said attorney, filed in said clerk's office its answer to the amended and substituted bill of Lewis H. Meyer, which said answer is in the words and figures following, to wit:

310 In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS
against
THE DAVENPORT & S'T PAUL RAILROAD COMpany and others.

Answer of the Delaware Railroad Construction Company to the amended bill of Lewis H. Meyer, filed in the above-entitled suit.

The Delaware Railroad Construction Company, for answer to the amended petition of Lewis H. Meyer filed in the above-entitled suit, reaffirming the allegations in the former answer of this defendant, admits that after judgment against Thomson and Dennison, proceedings
311 were in said suit continued against them as trustees, but this defendant denies the allegation that "no notice was served on Thomson and Dennison of this suit."

2. This defendant denies that said Thomson and Dennison made a proper application under the act of 1875, or any other act, for the transfer of said cause to this court. Defendant denies that they filed a petition and bond with adequate security for costs for such transfer.

3. Defendant admits that said Dennison has appealed said judgment to the supreme court of the State.

4. Defendant denies that the claim of this defendant is now fully before this court by the transfer of said cause under the act of Congress; denies that the acts of said State court in refusing to transfer
312 said cause, and in trying the same, are null and void and contrary to law; denies that the lien of plaintiff's alledged mortgage is prior to that of this defendant, and denies that this defendant waived any right to a lien as contractors under their contract mentioned by agreeing to take certain parties in Delaware County for the payment of the work to be done and done under their contract.

Defendant denies that said allegations appear in the records and proceedings of said State court.

5. Defendant admits that the Delaware County Railroad Company is a purchaser of the portion of said road lying in Delaware County, but alledges that said company paid this defendant a fair value for said transfer to it of said property.

313 This defendant prays, therefore, to be hence dismissed, with its reasonable costs and charges in this suit laid out and expended.

(S'g'd) J. M. BRAYTON,
Solicitor for Del. Railroad Construction Company.

STATE OF IOWA,
Delaware County, ss:

I, R. Eddy, being duly sworn, say that I am treasurer of the Delaware Railroad Construction Company, and hold also the office of member of the board of directors of said company; that I have heard the foregoing answer read and know its contents, and that the matters and things therein set forth and the statements therein made are true, as I verily believe.

(S'g'd) R. EDDY.

314 Subscribed by R. Eddy, in my presence, and sworn to by him before me on this 30th day of September, A. D. 1875.

(S'g'd) J. B. BOGGS,
U. S. Commissioner.

(Endorsed:) Moses De Witt Loomis vs. D. & S't Paul Railroad Company. Answer of Del. R. Construction Co. to amended petition of Myers. Filed Oct. 4, '75. Corkhill, cl'k.

315 On the 21st day of October, the same being of the October term, 1875, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

316 United States circuit court, district of Iowa, October term, Thursday, October 21st, 1875.

MOSES DE WITT LOOMIS
vs.
DAVENPORT AND S'T PAUL RAILWAY COMPANY. } No. 552. Eq.

On this 21st day of October, A. D. 1875, came on for hearing the petition of the Delaware County Railroad Company, J. M. Brayton appearing for said petitioners and Grant and Smith appearing for Lewis H. Meyer, trustee, and for John E. Henry, receiver.

The matter of said petition being considered by the court, it is ordered that the relief prayed therein be refused, without prejudice to said petitioner and without costs.

And leave is granted to said petitioner to set up the rights and claims in said petition, made by way of cross-bill in the suit in this
317 court, entitled Moses De Witt Loomis vs. The Davenport & S't Paul Railroad Company & others.

JNO. F. DILLON, *Judge.*

318 Afterwards, to wit, on the 3d day of November, 1875, the said complainant, by his said attorney, filed in said clerk's office an amendment to his bill, which said amendment is in the words and figures following, to wit:

319 *Amendment to bill vs. Delaware R. R. Co.*

In the circuit court of the U. S. for the district of Iowa.

MOSES DE WITT LOOMIS, LEWIS H. MEYER, and W'm Dennison
vs.
THE DAVENPORT AND S'T PAUL RAILWAY Company and others.

Further amending the bill of the pl'ffs against the said Delaware Railroad Company, your petitioners would respectively say that the said deed from the Delaware Railroad Construction Company to the said railroad company was made under the following circumstances: The said construction company's charter being about to expire, the stockholders and managers of the same formed said Delaware Railroad Company to enable them to keep and maintain their title to said property named in said deed; that the same parties were substantially the same in both companies; that no consideration whatever was paid by one
320 corporation to the other on the execution of said deed, and the grantees took the title with a full knowledge of all the facts connected with said title at the time.

JAMES GRANT,
For Plaintiff.

Service upon me of a copy of the foregoing amendment to bill vs. Delaware Railroad Company is admitted this 1st November, A. D. 1875.
(S'g'd) J. M. BRAYTON,
For Del. Railroad Co.

(Endorsed:) In the circuit court of the U. S. for the dist. of Iowa. Moses De Witt Loomis and others vs. The D. and S't P. R. R. Co. and others. Amendment to bill vs. Del. R. R. Co. Filed Nov. 3, '75. George B. Corkhill, clerk. Grant and Smith, for pl'ffs.

321 On the 4th day of December, 1875, said Delaware Co. R. R. Co., by its said att'y, filed in said clerk's office its answer to amended bill of Lewis H. Meyer, which said answer is in the words and figures following, to wit:

322 In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS, LEWIS H. MEYER, and William Dennison
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company and others.

Answer of the Delaware County Railroad Company to the amended bill of plaintiffs in the above-entitled suit:

1. The Delaware County Railroad Company, one of the defendants named in the above-entitled suit, not waiving any objections to the errors and defects contained in the substituted and amended bills of complaint filed in said suit, for answer to so much thereof as this defendant is advised it is material or necessary for it to answer, says that the alle-

gations and statements contained in the former answer of this de-
323 fendant are true.

2. Said defendant, answering, denies that the deed from the Delaware Railroad Construction Co. to this defendant was made under the circumstances alleged in said amended bill. Defendant, answering, says that said Delaware Railroad Construction Company was incorporated under the general incorporation law of the State of Iowa; that the term for which it was incorporated, according to the articles of incorporation of said company, would, at the time of the sale and execution of said deed, continue for a period exceeding four months, and that by said articles of incorporation said company was empowered and allowed to extend the time of the duration of said company for more than forty years by changing the articles fixing the duration of said incoporation; and said construction company had no charter except said articles.

3. This defendant denies the allegation in said amended bill
324 that the stokholders and managers of said construction company formed said Delaware County Railroad Company, and denies that they formed the same to enable them to keep and maintain their title to said property named in said deed, and the allegation that the parties were substantially the same in both companies.

4. Defendant, answering, says that said railroad company does not and never did contain all the members of said construction company, and said Delaware County Railroad Company now includes, and at the time of its organization, did include, and ever has included among its members and stockholders, persons who are not now and never were members of said Delaware Railroad Construction Company.

5. And since its organization and the purchase of said property, changes have occurred in the membership of said Delaware County Railroad Company.

325 Defendant, answering, denies the allegation "that no consideration whatever was paid by one corporation to the other on the execution of said deed," also the allegation "that the grantees took the title with a full knowledge of all the facts connected with said title at the time."

6. This defendant, answering, says that it purchased that portion of the Davenport and S't Paul Railroad lying in Delaware County, Iowa, and paid for the same the sum of fifty-three thousand nine hundred and seventy-four dollars and seventy-three cents; that said purchase and payment were made in good faith and without any knowledge or notice of any defect in the title and interest purchased on the part of this defendant, and without any knowledge of the claim made by the bill of complaint in this suit against this defendant. And this defendant does not believe the claim made in this suit against the title in this case to be well founded, and does not believe the claim against said con-
326 struction company to be well founded or just.

7. And for further answer to said amended bill, and as a plea in bar, this defendant says that on or about the sixth day of August, A. D. 1870, the Delaware Railroad Construction Company entered into a contract to grade, bridge, and furnish ties for that portion of the Davenport and S't Paul Railroad lying in Delaware County, Iowa, said contract having been made with said Davenport and S't Paul Railroad Company. A copy of said contract is contained in Exhibit A annexed to the petition in the suit commenced in the circuit court of Delaware County, Iowa, entitled the Delaware Railroad Construction Company against the Davenport and S't Paul Railroad Company and others, in which suit a copy of the record was filed in this court by the plaintiffs

in this suit in the month of October, A. D. 1875, and said record contains a copy of said contract, commencing on page number twenty-
327 two of said record, to which reference is hereby made.

8. Said Delaware Railroad Construction Company performed the work and furnished the materials required by said contract, and completed the same on or about the month of October, A. D. 1872. Afterwards, on or about the 20th day of December, A. D. 1872, it filed a statement for a mechanic's lien upon said portion of said road in the office of the clerk of the district court of Delaware County, Iowa, a copy of said statement being included in said Exhibit A, commencing on page number 22 and ending on page number 28 of said record, to which reference is hereby made.

9. Afterwards in the month of January, A. D. 1874, said Delaware Railroad Construction Company commenced a suit in said circuit court of Delaware County against said D. and S't Paul Railroad Company and others, including John Edgar Thompson and William Dennison, trustees, to establish a mechanic's lien upon said portion of said
328 road; said suit was founded upon said contract, and a decree of said circuit court was rendered in said suit on the 6th day of February, A. D. 1874, establishing said lien thereon against said D. and S't Paul R. R. Co., a copy of said decree being contained on pages Nos. 68, 69, and 70 of said record filed in this court, to which reference is made for further description of said decree.

10. Afterward, on the 22nd day of May, A. D. 1874, said circuit court rendered a decree in said suit against said John Edgar Thompson and William Dennison, trustees, establishing said lien against them; a copy of said decree being contained on pages Nos. 80 and 81 of said record, filed in this court, to which decree reference is hereby made for a fuller statement of the terms thereof.

11. In the month of February, A. D. 1874, a special execution was issued upon said decree of the 6th of February against said D. and
329 S't Paul R. R. Co., under which the sheriff of said county of Delaware levied upon said property, and, after due notice and appraisement, on the 4th day of May, A. D. 1874, sold said property to R. Eddy, as trustee for said Delaware Railroad Construction Company, a copy of said execution and of the return thereto by said sheriff being contained in said record filed in this court, on pages Nos. 73, 74, 75, 76, and 77 thereof, to which reference is hereby made.

12. Said sheriff executed to said R. Eddy, trustee, a certificate of sale and a deed of said property, copies of said certificate and deed, marked Exhibits B and C, are annexed to a petition of said Delaware Railroad Construction Company filed in this court on or about September, A. D. 1875, to which reference is hereby made.

13. Afterwards, on the 19th day of Jan'y, A. D. 1875, this defendant purchased said property of said Delaware Railroad Construction Company for the sum of fifty-three thousand nine hundred and seventy
330 dollars seventy-three cents, and this defendant at the time of said purchase on said 19th day of January, 1875, paid to said Delaware Railroad Construction Company for said property the sum of thirty-three thousand and two hundred dollars in the notes and obligations of various persons taken by this defendant in payment for their subscriptions to the stock of this defendant, and in payment of the remainder of said purchase money this defendant executed to said Del. R. R. Construction Co. the promissory note of this defendant, which was taken by said last-named company in payment of the remainder of said purchase money; subsequently this defendant purchased notes and ob-

ligations then outstanding against said last-named company for indebtedness previously incurred by it, and paid such indebtedness for said company at its request, and surrendered said notes and obligations to said company, which received and accepted the same in full payment
331 of said promissory note so executed to said company by this defendant.

14. And upon said purchase by this defendant, said certificate of sale of said property was assigned to this defendant, as will more fully appear by reference to a copy of said assignment endorsed on said copy of said certificate above mentioned, to which reference is hereby made, and said R. Eddy, trustee, executed to this defendant a deed of said property, a copy of which, marked "Exhibit D," is annexed to said petition of said Del. R. R. Construction Co., filed in this court as aforesaid, to which reference is hereby made.

15. And said property not being redeemed from said sale within one year from the date of said sale, the sheriff of Delaware County, Iowa, on the tenth day of May, A. D. 1875, executed to this defendant, by virtue of said certificate of sale so assigned to this defendant a , copy of said deed, marked "Exhibit E," is annexed to said petition of
332 said Del. R. R. Construction Co. filed in this court, to which reference is hereby made.

16. Defendant says that said certificate of sale was dated May 4th, A. D. 1874; was executed by Abner Dunham as sheriff of Delaware County, he then being and acting as such sheriff, and included all that portion of the Davenport and S't Paul Railroad lying in said Delaware County, and was executed to said Del. R. R. Construction Co.

17. Said assignment was made by said last-named company to this defendant, was dated on the 20th day of January, A. D. 1875, and included the same property.

18. The first deed herein mentioned as marked "Exhibit C" was dated May 4th, 1874, was executed by said Dunham, as sheriff of said county, to R. Eddy, trustee for said Del. R. R. Construction Company, and included the same property.

19. The deed herein mentioned and marked "Exhibit D" was
333 dated on the 19th day of January, A. D. 1875, was executed to this defendant by R. Eddy as trustee of said Del. R. R. Construction Co., and included the same property.

20. The deed herein mentioned as marked "Exhibit E" was dated on the tenth day of May, A. D. 1875, was executed to this defendant by Abner Dunham, sheriff as aforesaid, and included the same property, to wit: all that part of the Davenport and S't Paul Railroad lying in Delaware County.

21. At the time of the purchase of said property by this defendant the same appeared to be owned by said R. Eddy as trustee for said Delaware Railroad Construction Company, which company then appeared to have the entire equitable interest thereof, subject to the right of redemption up to the fourth day of May, A. D. 1875, from said sale; and this defendant then believed, and still believes, that said Del. R. Construction Co. was the equitable owner of said property, sub-
334 ject to said right of redemption to said 4th day of May, A. D. 1875.

And this defendant at the time it received said deeds of said property and said assignment of said certificate of sale, and at the time it made full and complete payment therefor, believed said Del. R. R. Construction Co. was the equitable owner of said property and had no

notice or knowledge of any defect in said title, and had no knowl- e ge or notice of the claims made in this suit that said construction company was not entitled to said mechanic's lien.

22nd. Defendant says S. Denton and Co., under a contract with said construction company, became entitled to a mechanic's lien upon the portion of said road extending from the Dubuque and Sioux City Railroad (occupied by the Illinois Central Railroad Co.) to the north line of Oneida Township in said Delaware County, which was assigned to Westphal, Hinds and Co., in whose favor a decree was rendered
335 by said circuit court of Delaware County, Iowa, in a suit against said Davenport and S't Paul Railroad Company and others, establishing said mechanic's lien; and under said decree said portion of said road was sold by said sheriff, on the 13th day of July, A. D. 1874, to said Westphal, Hinds and Co., for the sum of two thousand five hundred and thirty-one $\frac{28}{100}$ dollars, under a special execution from said circuit court, and on the tenth day of June, A. D. 1875, this defendant paid to the clerk of said circuit court twenty-nine hundred and seventy-nine dollars and sixty cents, to redeem said portion of said road from said sale, which was valid and paramount to that under which this defendant first purchased said property.

23. And this defendant paid said money to said clerk to redeem said property in good faith, and with no knowledge or notice of any
336 defect in the title purchased by defendant, or in the sale and interest under which defendant redeemed from said sale to Westphal, Hinds and Co., and said sum of $2,979.60 was paid by this defendant in addition to the original consideration paid by defendant of the value of $53,974.73, on said 19th day of January, A. D. 1875, making the total payments for said property and to remove said incomebrance of the value of $56,954.33.

24. And all of said payments were truly and in good faith made by this defendant, with no notice of the claim of said plaintiffs made in said substituted and amended bills in this suit.

And defendant says said plaintiffs are entitled to no relief against this defendant.

(Signed) J. M. BRAYTON,
Solicitor for Delaware County Railroad Company, Def't.

(S'g'd) J. M. BRAYTON,
Of Counsel.

337 STATE OF IOWA,
Delaware County, ss:

I, Ancil E. Martin, being duly sworn, say that I am secretary of the Delaware County Railroad Company, and member of the board of directors of said company; that I have heard the foregoing answer read, and that the matters and things therein set forth are true.

(Signed) ANCIL E. MARTIN.

Subscribed to and sworn to by Ancil E. Martin, before me, on this 2nd day of December, A. D. 1875.

(S'g'd) J. B. BAGGS,
U. S. Commissioner.

(Endorsed:) Moses De Witt Loomis et al. vs. D. and S't Paul R. R. Co. et al. Answer to amended bill by Del. Co. R. R. Co. Filed Dec. 4, 1875. George B. Corkhill, clerk.

338 Afterwards, to wit, on the 6th day of December, 1875, the said Delaware Co. Railroad by its said att'y, filed in said clerk's office its cross bill against Lewis H. Meyer et al.; which said cross bill is in the words and figures following, to wit:

339 *Cross bill of Delaware County Railroad Company.*

In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company et al.

To the judges of the circuit court of the United States for the district of Iowa:

1. The Delaware County Railroad Company, one of the defendants in the above-entitled suit, brings this cross bill against the said plaintiffs, Moses De Witt Loomis, Lewis H. Meyer, and William Dennison, and John E. Henry, receiver of the Davenport and S't Paul Railroad, whom he asks to have made a defendant to this cross bill.

2. Said Delaware County Railroad Co. alleges that it is a corporation duly organized under the laws of the State of Iowa, and has existed as such corporation since the 18th day of January, A. D. 1875;
340 that in the month of December, A. D. 1874, said Moses De Witt Loomis brought this suit in the circuit court of the United States for the district of Iowa, against the Davenport S't Paul Railroad Company and others, in which, on or about the 17th day of December, A. D. 1874, George H. French was by said court appointed a receiver of the Davenport and S't Paul Railroad, which runs through Delaware County, Iowa.

3. Said Del. Co. R. R. Co. alleges that afterwards, to wit, on or about the day of March, A. D. 1875, John E. Henry was by this court appointed a receiver of said property in place of said French, and that said Henry took possession of said property in the month of March, 1875, and has ever since as said receiver held and now holds possession of said railroad, and has operated and now operates the same.

4th. Afterwards said Lewis H. Meyer filed in said suit a substituted bill of complaint for the foreclosure of a certain alleged mortgage
341 and by an amendment thereto made this defendant a party, and this defendant has answered and hereby refers to said substituted bill and amendments thereto, and to the answers of this defendant to said substituted bill and the amendments thereto.

5. Said Del. Co. R. R. Co. alledges that it is the sole and absolute owner of the following described property situated in Delaware County, Iowa, to wit: all that part of the Davenport and S't Paul Railroad lying and situated in Delaware County, Iowa, extending from the south line of said county to the north line thereof, as the same has been located and as it is operated, including the right of way, the road-bed, track, depot buildings, side-tracks, and land on which the same are situated, and all fixtures connected with said grounds and buildings, and all the right, title, and interest heretofore at any time held by the Davenport and S't Paul Railroad Company in and to the lands upon which
342 said improvements are situated.

6. Said Del. Co. R. R. Co. alledges that it is entitled to the

present and immediate possession of said property, and has been entitled to such possession from the 4th day of May, A. D. 1875, and has the following foundation:

7. On or about the sixth day of August, A. D. 1870, the Davenport and S't Paul Railroad Company, one of the defendants in this suit, made a contract with the Delaware Railroad Construction Company, one of the defendants in this suit, whereby said last-named company agreed to grade, bridge, and furnish ties and other material for the portion of said railroad lying between the south and north lines of said Delaware County. A copy of said contract is contained in the record of a suit entitled The Delaware Railroad Construction Company against The D. and S't Paul R. R. Co. and others, commenced in the circuit court
343 of Delaware County, Iowa, in January, A. D. 1874, a copy of the record of which suit was filed in this court in the month of October, A. D. 1875, and on pages Nos. 22, 23, 24, 25, and 26 thereof is contained a copy of said contract, to which reference is hereby made.

8. Said Del. R. R. Construction Company complied with the terms of said contract, performed the work, and furnished the materials for said portion of said road, completing the same on or about the month of October, A. D. 1872.

9. Afterwards, on the 20th day of August, A. D. 1872, said Del. R. R. Construction Co. filed in the office of the clerk of the district court of Delaware County, Iowa, a statement for a mechanic's lien upon said portion of said road. A copy of said statement is contained in said copy of said record filed in this court in October, A. D. 1875, on pages Nos. 22, 23, 24, 25, 26, 27, and 28, to which reference is hereby made.
344 10. Afterwards, in January, A. D. 1874, said Del. R. R. Construction Co. commenced suit in said circuit court of Delaware County, to establish a mechanic's lien, making defendants with others, said D. and S't Paul R. R. Co., John Edgar Thompson and William Dennison, trustees of bondholders of said D. and S't Paul R. R. Co., and on the 6th day of February, A. D. 1874, said court rendered a decree in said suit against said last-named co. establishing said mechanic's lien upon said portion of said road. A copy of said decree is contained in said record of said suit filed in this court in October, A. D. 1875, on pages Nos. 68, 69, and 70 thereof, to which reference is hereby made.

11. Said suit was at said February term of said court continued as to said Thompson and Dennison, trustees; and on the 22nd day of May, A. D. 1874, said court rendered a decree against them establishing said lien, and declaring the lien of said Del. R. R. Construction Co. paramount to that of said Thompson and Dennison, and foreclosing
345 their right of redemption of said portion of said road. A copy of said decree is contained on pages Nos. 80 and 81 of the said copy of said record, filed in this court in October, A. D. 1875, to which reference is hereby made.

12. After the rendition of said first named decree a special execution founded thereon was in the month of February, A. D. 1874, duly issued to the sheriff of Delaware County, Iowa, who by virtue thereof levied upon said portion of said road and advertized and sold said portion of said road on the 4th day of May, A. D. 1874, to R. Eddy, as trustee of said Del. R. R. Construction Company, as will more fully appear by said execution and the return thereon by said sheriff, copies of which are contained in said record, filed in this court in October, A. D. 1875, on pages Nos. 73, 74, 75, 76, and 77 thereof, to which reference is hereby made.

346 13. At said sale said sheriff executed to said R. Eddy a certifi-

cate of sale of said property and a sheriff's deed of the same. A copy of said certificate of sale marked Exhibit "B," and a copy of said deed marked Exhibit "C," are annexed to said petition of said Delaware County Railroad Co., filed in this court on or about September, A. D. 1875, to which reference is hereby made.

14th. Said property was not redeemed from said sale, and on the 19th day of January, A. D. 1875, this defendant, the Del. County R. R. Co., purchased said property of said Del. R. R. Construction Company for the sum of fifty-three thousand nine hundred and seventy-four dollars and seventy-three cents, and received an assignment of said certificate of sale, a copy of which is endorsed upon the copy of said certificate of sale, marked Exhibit "B" and annexed to said petition, filed in this court by said Del. Co. R. R. Co. on or about the month of Sep-
347 tember, A. D. 1875, to which reference is hereby made. Said assignment was executed by R. Eddy, as trustee, and included said property and said certificate of sale.

15. Said R. Eddy, as trustee, also executed to said Del. Co. R. R. Co. on said 19th day of January, A. D. 1875, a deed of said property dated January 19, 1875, a copy of which deed marked Exhibit "D" is annexed to said petition, filed in this court on or about September, A. D. 1875, to which reference is hereby made.

16. Said Del. Co. R. R. Co. paid to said Del. R. R. Construction Co. for said property the full value of $53,974.73, in the manner stated in the answers of this defendant made in this suit. The same was paid by the said Del. Co. R. R. Co. in good faith, with no notice or knowledge of any defect in said title, sale, or conveyance.

17. Said property was not redeemed from said sale by said sheriff, and on the tenth day of May, A. D. 1875, under said sale, certifi-
348 cate, and assignment, the sheriff of said Delaware County executed to said Del. Co. R. R. Company a deed of said property. A copy of said deed marked Exhibit "E" is annexed to said petition, filed in this court on or about September, A. D. 1875, to which reference is hereby made.

18. Said last-named deed was duly acknowledged, and afterwards duly recorded in the office of the recorder of Delaware County, Iowa, on the 13th day of May, A. D. 1875. Said deed from R. Eddy, trustee, dated January 19th, A. D. 1875, was duly acknowledged, and afterwards duly recorded in the office of said recorder on the 19th day of January, A. D. 1875. Said deed from the sheriff of Delaware County, Iowa, to said Delaware Railroad Construction Company, dated May 4th, 1874, duly acknowledged and afterwards duly recorded in the office of said recorder of Delaware County, Iowa, on the 8th day of May, A. D. 1874. And said deeds from the time each of them was recorded became and
349 were notice to the plaintiffs in this suit, and all other persons, of their contents and the rights of the respective grantees therein.

19. And by virtue of said decrees, sales, and conveyances, and the facts hereinbefore stated, said Delaware County Railroad Company became and was the sole and absolute owner of said property, and became and was entitled to the possession of said property from the 4th day of May, A. D. 1875, to the present time, and still is such owner and entitled to such possession thereof.

20. Said Del. Co. R. R. Company *Co.* states that said George H. French was appointed receiver by this court as aforesaid, without notice of the application for his appointment to said Del. R. R. Construction, and said John E. Henry was appointed such receiver without notice thereof, or of application therefor, to said Del. R. R. Construction Co. or to said Del. Co. R. R. Co.

21. Said Del. Co. R. R. Co., after said 4th day of May, A. D.
350 1875, and previous to the 5th day of August, A. D. 1875, demanded of said John E. Henry the possession of said property, and he refused to give possession thereof.

22. At the October term of this court said Del. Co. R. R. Co. made application to this court for the possession of said property and payment of damages for the use thereof from said 4th day of May, A. D. 1875, or for leave to bring suit therefor against said receiver, and leave was granted to apply by cross bill in this suit for the same.

23. Said Delaware County Railroad Company says that said plaintiffs in this suit, by procuring the appointment of said receiver in this case, who has by virtue thereof held possession of said property from the 4th day of May, A. D. 1875, and for a long time previous, have deprived said Del. Co. R. R. Co. of the possession of said property and rents and profits thereof, and the use and occupation thereof, and said company has thereby been unjustly deprived of the possession of said prop-
351 erty and of the benefits arising from the possession thereof fro m said 4th day of May, A. D. 1875. And the said Del. Co. R. R. Company has sustained great damages thereby, to wit, the sum of two thousand dollars per month for each month from said 4th day of May, A. D. 1875, amounting at this time to the sum of twelve thousand dollars.

24. Said Lewis H. Meyer and William Dennison claim to be trustees of a certain mortgage of the entire road known as the Davenport and S't Paul Railroad, and have in this suit sought to foreclose the same. Said Loomis claims to hold a bond or bonds which he claims is secured by said mortgage, and to recover payment of which he brought this suit, as will more fully appear by reference to the original, substituted, and amended bills filed therein, to which and the proceedings in this case reference is hereby made.

25. All of which acts and proceedings of said parties are unjust, and tend to the manifest injury of said Delaware County Railroad
352 Company, and are inequitable.

26th. To the end, therefore, that said Davenport and S't Paul Railroad Company, said Moses De Witt Loomis, Lewis H. Meyer, William Dennison, trustees, and John E. Henry, receiver as aforesaid, may show cause, if they can, why said Delaware County Railroad Company should not have the relief hereinafter prayed, and may full answer make to all the allegations of this cross bill, said Delaware County Railroad Company prays that a writ of subpœna issue from this court, directed to them, to answer by a day named therein, that an account may be taken of the amount of said damage to said Del. Co. R. R. Co.; that said John E. Henry, receiver, be ordered to deliver said property, to wit, the portion of the Davenport and S't Paul Railroad situated in Delaware County, Iowa, to said Delaware County Railroad Company, and to pay said last-named company the damage found to be due it on account of
353 the withholding from it of said property, and in case said receiver has not in his hands sufficient funds to pay the damages herein prayed, that the same be ordered to be paid out of other funds or property in the hands of said trustees or belonging to said D. and S't Paul R. R. Co.; that said Del. Co. R. R. Co. may have a decree for costs, and may have such other or further relief as may be consistent with equity.

(Signed) J. M. BRAYTON,
Solicitor for Delaware County Railroad Company.

(S'g'd) J. M. BRAYTON,
of Counsel.

STATE OF IOWA,
Delaware County, ss:

I, Ancel E. Martin, being duly sworn, say that I am secretary of the Delaware County Railroad Company, and a member of the board
354 of directors of said company; that I have read the foregoing cross bill and know its contents, and that the matters and things therein set forth are true.

(Signed) ANCIL E. MARTIN.

Subscribed by Ancil E. Martin in my presence, and by him sworn to before me on this 4th day of December, A. D. 1875.

(S'g'd) J. B. BAGGS,
U. S. Commissioner.

(Endorsed:) Moses De Witt Loomis vs. D. and S't P. R'y Co. Cross bill of Delaware Co. R. R. Co. Filed Dec. 6, '75. George B. Corkhill, clerk. J. M. Brayton, for compl't in X bill.

355 On the 13th day of December, 1875, the said complainant, Lewis H. Meyer, by his said att'y, filed in said clerk's office his replication to answer of Delaware Co. R. R. Co., which said replication is in the words and figures following, to wit.

356 *Replication.*

In the circuit court of the United States for district of Iowa.

MOSES DE WITT LOOMIS, LEWIS H. MEYER, and WILLIAM DENNISON
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company and others.

Now come the plaintiffs in the above-entitled cause, and, reserving all and all manner of advantage of exception to the many insufficiencies of the answer of the Delaware County Railroad Company, for replication thereunto say that they will aver and prove their substituted and amended bills in this cause to be true, certain, and sufficient in law to be answered unto by said defendant; that the said answer of the Delaware County Railroad Company is uncertain, untrue, and insufficient in law to be replied unto, and this they will aver and prove as this court may
357 direct. Without this, that anything in said answer contained material in law to be answered unto, confessed and avoided, traversed or denied, is true. Wherefore the said plaintiffs pray as by their substituted and amended bills in this cause they have already prayed.

(Signed) GRANT AND SMITH,
Solicitors for Pl'ffs.

(Endorsed:) In the circuit court of the U. S. for the district of Iowa Moses De Witt Loomis et al. vs. The Davenport and S't Paul R. R. Co. and others. No. 552. Replication to answer of Del. Co. R. R. Co. Filed Dec. 13, 1875. George B. Corkhill. Grant and Smith, solicitors for compl'ts.

358 Afterwards, to wit, on the 24th day of December, 1875, the said Lewis H. Meyer et al., by their said att'ys, filed in said clerk's office their answer to the cross-bill of the Delaware Co. Railroad Co., which said answer is in the words and figures following, to wit:

359 Answer to cross-bill of the Delaware County Railroad Company.

In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS ET AL. *vs.* THE DAVENPORT AND S'T PAUL RAIROAD Company et al.	Bill in equity.

Now come the complainants in said cause, and waiving no advantage of exception to the manifold insufficiencies of the said cross-bill, for answer to so much thereof as they are advised it is material for them to answer, say:

1. That as to the organization of the Delaware County Railroad Company and its existence since the 18th of January, 1875, these complainants have no knowledge or information sufficient to form a belief, and require strict proof thereof.

2. They admit that Moses De Witt Loomis brought suit in the
360 month of December, A. D. 1874, against the Davenport and Saint Paul Railroad Company; that Geo. H. French was appointed receiver of the said railroad company in said suit on or about the 17th day of December, A. D. 1874, and that the Davenport and S't Paul Railroad runs through Delaware County, Iowa.

3. They further admit that on the day of March, A. D. 1875, John E. Henry was appointed receiver of the *of the* property of said railroad company in the place of said French, and that said Henry took possession of said property in the month of March, 1875, and has ever since, as said receiver, held, and now holds, possession of said railroad, and has operated, and now operates, the same.

4. Admit that afterwards said Lewis H. Meyer filed in said suit a substituted bill of complaint for the foreclosure of a certain mortgage, and by amendment thereto made the Delaware County Railroad Company a party defendant.

361 5. And these complainants deny that the Delaware County Railroad Company is the sole and absolute owner of the following described property, situated in Delaware County, Iowa, to wit: All that part of the Davenport and S't Paul Railroad lying and situated in Delaware County, Iowa, extending from south line of said county to the north line thereof, as the same has been located, and as it has been operated, including the right of way, the road-bed, track, depot buildings, side tracks, and lands on which the same are situated, and all fixtures connected with said grounds and buildings, and the right, title, and interest heretofore at any time held by the Davenport and S't Paul Railroad Company in and to the lands upon which said improvements are situated, and denies that the said Delaware County Railroad Company has any title whatever to the above-described property.

362 6. Deny that the said Delaware County Railroad Company is entitled to the present and immediate possession of said property, and that said company has been entitled to such possession from the 4th day of May, A. D. 1875.

7. Admit that on or about the 6th day of August, 1870, the Davenport and S't Paul Railroad Company entered into the alleged contract with the Delaware Railroad Construction Company for the construction of its said railroad through Delaware County, Iowa.

8. That as to the compliance by the Delaware Railroad Construction Company with the terms of the said contract, its performance of the

work, and its furnishing the materials for said portion of said road, and its completion of the same on or about the month of October, A. D. 1872, these complainants have no knowledge or information, and demand proof thereof.

363 9. That they have no knowledge or information of the filing on the 20th day of August, A. D. 1872, in the office of the clerk of the district court of Delaware County, Iowa, by the Delaware Railroad Construction Company, of a statement for a mechanic's lien upon said portion of said road, and demand proof thereof.

10. Admit that a suit was brought in said circuit court of Delaware County, Iowa, by the Delaware R. R. Construction Company against the Davenport and S't Paul Railroad Company to establish a mechanic's lien, but deny that John Edgar Thompson and William Dennison, or either of them, were made parties as trustees for the bondholders of the Davenport and S't Paul R. R. Company or otherwise.

11. Admit that in said suit by said circuit court a decree was rendered against said *said* railroad company on 6th Feb., 1874, establishing said mechanic's lien upon the property of said company,

364 but said Dennison and Thompson, as trustees, were not parties to said decree, and are not bound by it. Admit that said suit was nominally continued as to Dennison and Thompson, trustees, at the said February term, A. D. 1874, of said circuit court, but that said trustees were not parties at that time by service of process.

12. Admits that said circuit court on the 22nd day of May, 1874, rendered a decree against said Thompson and Dennison, as trustees, establishing said lien, and declaring the lien of said Delaware Railroad Construction Company paramount to that of said Thompson and Dennison, but deny that said Thompson and Dennison were then parties to said suit, and aver that said judgment and decree was rendered against them without any appearance on their part.

13. And these complainants, further answering, aver that under

365 the said decree of February 6, 1874, a special execution was issued on the 17th day of February, A. D. 1874, and under said execution the sheriff of Delaware County levied upon all the interest of the Davenport and S't Paul Railroad Company in and to the railroad property and premises of said company in Delaware County, Iowa.

14. That the said interest of the Davenport and S't Paul Railroad Company in said property was sold by the said sheriff on the 4th day of May, A. D. 1874, to the Delaware R. R. Construction Company, or R. Eddy, its trustee, for the full amount of its judgment against said railroad company, together with the interests and costs upon the same, whereby the lien of said construction company was satisfied and discharged.

15. And that at the time of the said execution, levy, and sale of said property the said Thompson and Dennison, trustees, were not parties by the service of process to said suit.

366 16. They admit the issuance of the execution upon the judgment of February 6, 1874, in said month, to the sheriff of Delaware County, Iowa, but deny that by virtue thereof said sheriff levied upon said portion of said road, and advertised and sold said portion of said road on the 4th day of May, 1874, to R. Eddy, as trustee of said Delaware R. R. Construction Company.

17. That the said sheriff levied upon, advertised, and sold under said execution only the interest of the Davenport and S't Paul Railroad Company in and to the said portion of the Davenport and S't Paul Railroad. These complainants further answer that after said sale on the 4th of

May, 1874, about the 22d of May following, the said Delaware Railroad Construction Company made the said Thompson and Dennison, trustees, parties by publication only, and took a judgment by default, making
367 them parties to the former judgment without any order or judgment for a sale of said property.

18. That on the 23rd May, 1874, said Thompson died, and that on January, 1875, said Dennison and Meyer, successor to Thompson, appeared in said court, had the default set aside, and afterwards the said cause as to said trustees was transferred to this court, where it is now pending, and as against said trustees and their bondholders there never was any judgment or sale of said property.

19. That as to the execution at the said sale by the said sheriff of a certificate of the sale of said property, and of a sheriff's deed to the same, on or about September, A. D. 1875, they have no knowledge or information, and require proof thereof.

20. Admit that there has been no redemption of said property from the said sale.

368 21. And these complainants deny that on the 19 day of January, A. D. 1875, the Delaware County Railroad Company, for the sum of fifty-three thousand nine hundred and seventy-four $\frac{73}{100}$ dollars, and received an assignment of said certificate of sale.

22. Deny that said assignment was executed by R. Eddy, as trustee, and included said property and said certificate of sale.

23. That as to the execution of the alleged deed to said Delaware County Railroad Company on the 19th day of January, 1875, these complainants have no knowledge or information, and demand proof thereof.

24. Deny that the Delaware County Railroad Company paid for said property the full value of $53,974.73 or any other sum to the Delaware R. R. Construction Company.

25. Deny that said *said* sum, or any other sum, was paid by said
369 county railroad company to the construction company aforesaid in good faith, with no notice or knowledge of any defect in said title, sale, or conveyance.

26. Admits that said property was not redeemed from said sale by said sheriff, but has no knowledge or information as to the execution by the sheriff of Delaware County of a sheriff's deed of said property under the said alleged sale and certificate and assignment, and demands proof thereof.

27. And these complainants have no knowledge or information as to the recording of said last-mentioned deed in the office of the recorder of Delaware County, Iowa, on the 13th May, A. D. 1875, and as to the acknowledgment of the same, and demand proof thereof.

28. They have no knowledge or information of the acknowledgment of the said deed, executed by R. Eddy, trustee, dated Jan. 19,
370 1875, and as to the alleged recording of the same on the 19 day of January, 1875, and require proof thereof.

They further have no knowledge or information that the alleged deed from the sheriff of Delaware County, Iowa, to the Delaware Railroad Construction Company, dated May 4th, was duly acknowledged, and afterwards duly recorded on the 8th day of May, 1874.

29. And these complainants deny that the said alleged deeds from the time each of them was recorded, become and were notice to the plaintiffs in this suit and all other persons, of their contents and the rights of the respective grantees therein.

30. Deny that by virtue of said alleged decrees, sales, and conveyances, and the facts in said cross-bill stated, said Delaware County Railroad

Company become and was the sole and absolute owner of said property, and that said company become and was entitled to the possession
371 of said property from the 4th day of May, 1875, to the present time, and deny that said company still is such owner and entitled to such possession thereof.

31. Admit that both George H. French and his successor, John E. Henry, were appointed receivers of the Davenport and S't Paul R. R. Company, and of the property of the same without notice to the Del. R. R. Construction Company, and without any application for said appointments by said company, but aver that said construction company had notice of the appointment each of said receivers immediately after the making of the same.

32. They admit the said demand of the receiver for the possession of said portion of the Davenport and S't Paul Railroad and property, and the refusal of said receiver to comply with said demand.

33. They admit the application to this court for the possession
372 of said railroad, and the payment of damages for the use thereof, or for leave to bring suit therefor, and said leave was granted by way of cross-bill in this cause.

34. Deny that the complainants by procuring the appointment of said receivers have deprived the Delaware County Railroad Company of the possession of said property, and the rents and profits, use and occupation thereof, and the benefits arising from the possession of the same from the 4th day of May, A. D. 1875, and for a long time previous.

35. Deny that the said company has sustained great damage by reason of the appointment of said receivers, to wit, the sum of two thousand dollars per month for each month from said 4th day of May, 1875, amounting at this time to the sum of twelve thousand, or to any other sum whatever.

373 36. Admit that Meyer & Dennison claim to be trustees of a certain mortgage of the Davenport and S't Paul Railroad and that they have brought suit to foreclose the same. Admit that Mr. De Witt Loomis claims to hold bonds which are secured by said mortgage, and to recover payment of which he brought suit.

37. And these complainants deny all and singular the averments of said cross-bill not herein specifically admitted.

38. And they for further answer say that the said Delaware R. R. Construction Company took collateral security on its said contract to complete said portion of railroad, and has waived all right to a mechanic's lien as against these complainants.

39. That the said Delaware Co. Railroad Company is substantially the same organization as the said construction company.

374 40. That said railroad company was attempted to be organized for the purpose of replacing the said construction company, whose charter was about to expire.

41. That said railroad company had actual notice at the time of its alleged organization and purchase of the interest of the said construction company in said portion of railroad, of all the defects in the title of said construction company, and of the rights of these complainants in said property.

Wherefore these complainants pray that said cross-bill be dismissed with costs.

(S'g'd) GRANT AND SMITH,
For Complainants.

UNITED STATES OF AMERICA,
Southern district of New York, ss:

Lewis H. Meyer, being duly sworn, says he is the complainant, as trustee, in the substituted bill in said cause, and a defendant in the said cross-bill; as such complainant that he has read the foregoing answer, and knows the contents thereof, and that he believes the
375 facts stated and allegations made in said answer are true.

(Signed) L. H. MEYER.

Sworn to and subscribed before me and in my presence by the said Lewis H. Meyer this 18th day of December, A. D. 1875.

[SEAL.] (S'g'd) EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

(Endorsed:) In the circuit court of the United States for the district of Iowa. M. D. Loomis et al. vs. The Davenport and S't Paul R. R. Company et al. Answer to cross-bill of Delaware Co. R. R. Company. Filed Dec. 24, 1875. George B. Corkhill, clerk. Grant and Smith for complainants.

376 Afterwards, to wit, on the 4th day of January, 1876, the Delaware Co. R. R. Co., by its att'y, filed in said clerk's office its replication to the answer of Lewis H. Meyer to its cross-bill in said cause, which said replication is in the words and figures following, to wit:

377 In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS ET AL.
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company et al.

The replication of the Delaware County Railroad Company to the answer of the complainants in this case made to the cross-bill of said Del. Co. R. R. Company.

To the judges of the circuit court of the United States for the district of Iowa:

This repliant saving and reserving to himself all and all manner of advantage exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that this repliant will aver and
378 prove the said cross-bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer is uncertain and untrue, and that the matters and things in said answer contained inconsistent with said cross-bill are untrue; all which matters and things this repliant is and will be ready to aver and prove as this court shall direct, and prays as in said cross-bill it has already prayed.

(Signed) J. M. BRAYTON,
Solicitor for Del. Co. R. R. Co.

(S'g'd) J. M. BRAYTON,
Of Counsel.

(Endorsed:) Moses De Witt Loomis et al. vs. D. and S't Paul R. R. Co. et al. Replication of Del. Co. R. R. Co. Filed Jan'y 4, 1876. George B. Corkhill, clerk.

379 In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS ET AL.
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company et al.

The replication of the Delaware County Railroad Company to the answer of the complainant in this case made to the cross-bill of said Del. Co. R. R. Company.

To the judges of the circuit court of the United States for the district of Iowa:

This repliant, saving and reserving to himself all and all manner of advantage exception to the manifold insufficiencies of the said answer, for replication thereunto saith that this repliant will aver and
380 prove the said cross-bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer is uncertain and 'true, and that the matters and things in said answer contained inconsistent with said cross-bill are untrue; all which matters and things this repliant is and will be ready to aver and prove as this court shall direct, and prays as in said cross-bill it has already prayed.

(S'g'd) J. M. BRAYTON,
Solicitor for Del. Co. R. R. Co.

J. M. BRAYTON,
Of Counsel.

(Endorsed:) M. D. Loomis et al. vs. D. and S't Paul R. R. Co. et al. Replication of Del. Co. R. R. Co. to answer of complainants to cross-bill. Filed Jan. 22, 1876. E. R. Mason, clerk.

381 On the 16th day of May, 1876, the same being of the May term, 1876, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

382 United States circuit court, district of Iowa, Tuesday May, 16, 1876.

MOSES DE WITT LOOMIS
vs.
DAVENPORT & S'T PAUL R'Y CO. } No. 552. Eq.

This cause came on this day, and Meyer and Dennison, trustees, were given leave to file amendment to their answer to the cross-bill of the Delaware Railroad Construction Company.

383 On the same day, to wit, May 16, '76, the said Lewis H. Meyer et al., by their said att'ys, filed in said clerk's office an amendment to their answer, which said amendment is in the words and figures following, to wit:

384 In U. S. C. cr. district of Iowa.

LEWIS H. MEYER
vs.
THE DAVENPORT & S'T PAUL RAILWAY COMPANY et al. } In equity.

THE DELAWARE RAILROAD CONSTRUCTION COMPANY et al.
vs.
LEWIS H. MEYER AND WILLIAM DENNISON, interpleaders with the Davenport & S't Paul Railway Company. } In equity.

Amendment to answer of Meyer & Dennison to the petition of the Delaware Railroad Construction Company, transferred Delaware County State court.

These defendants, further answering, say that when said con-
385 tract of the Delaware Railroad Construction Company was made, and until it was performed with the Davenport and S't Paul Railway Company, one Doolittle, named in said papers, was a director in the Davenport & S't Paul Railway Company, and a director & stockholder in the said construction company, and said contract was, as against the said trustees, creditors of the said railway company, fraudulent in law, null and void, and ought to be enforced in a court of equity.

GRANT & SMITH,
For Meyer.

(Endorsed:) 552. L. H. Meyer et al. vs. The Davenport & S't Paul Railway Company et al. Amendment to the answer of Meyer and Dennison. Filed May 16, 1876. E. R. Mason, cl'k. Grant and Smith, for M. and D.

386 On the 25th day of May, 1876, the said Delaware R. R. Construction Company, by its said att'y, filed in said clerk's office its replication to amendment to answer of L. H. Meyer et al., which said replication is the words and figures following, to wit:

387 In the United States circuit court, district of Iowa. In equity.

LEWIS H. MEYER
vs.
THE DAVENPORT & S'T PAUL RAILWAY COMPANY et al.

Comes now the Delaware Railroad Construction Company, and saving and reserving all manner of advantage of exceptions to the manifold insufficiencies of the amendment to answer filed herein by Lewis H. Meyer, for replication thereto says that the said amendment is insufficient in law to be replied thereunto and that the matters and things therein stated are untrue, and said Delaware Railroad Construction Company prays as by its former pleadings he has already prayed.

(S'g'd) J. M. BRAYTON,
388 *For Delaware Railroad Construction.*

(Endorsed:) No. 552. Eq. Lewis H. Meyer vs. The Davenport & S't Paul Railroad Company et al. Replication of the Delaware R. R. Const. Company to amendment to answer. Filed May 25th, 1876. E. R. Mason, clerk.

389 Afterwards, to wit, on the 29th day of May, the same being of the May term, 1876, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

390 United States circuit court, district of Iowa, Monday, May 29, 1876.

MOSES D. LOOMIS
vs.
DAVENPORT AND S'T PAUL RAILROAD CO. ET AL. } No. 552. Eq.

This cause came on this day for hearing, and was submitted to the court upon the issues joined between the Delaware Railroad Construction Company and the Delaware County Railroad Company, and Meyer and Dennison, trustees, J. M. Brayton appearing for the construction company and railroad company, and James Grant for the trustees, and the same was, after argument of counsel, taken under advisement by the court.

391 On the trial of said cause certain depositions, stipulations, and documentary evidence were introduced and read, of which the following are true copies:

392 In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS ET AL.
vs.
THE DAVENPORT AND S'T PAUL RAILROAD COMPANY ET AL.

It is hereby stipulated and agreed between the complainants in said cause, Lewis H. Meyer and William Dennison, trustees, and the Delaware County Railroad Construction Company, that the Delaware Railroad Construction Company, on the 6th day of August, 1870, entered into a contract with the Daevnport and S't Paul Railroad Company, a defendant in this suit, to grade, bridge, and furnish ties for that part of the Davenport and S't Paul Railroad included between the north and south lines of Delaware County, Iowa. A copy of said contract is contained in the record filed in this court, entitled "The Delaware Railroad Construction Company vs. The Davenport and S't Paul Railroad
393 Company and others," on pages 22, 23, 24, 25, and 26. Said construction company began work under said contract in 1870, and completed the same after the first day of September, A. D. 1872; on the 20th day of December, 1872, the Delaware Railroad Construction Company filed in the office of the clerk of the district court of Delaware County, Iowa, a statement for a mechanics' lien, a copy of which is contained in the record above referred to, on page 22 to 28, inclusive.

That the said contract of 6th of August, 1870, was changed afterwards by agreement of the contracting parties, as appears by Exhibits B and C to the said record, which are made a part of this stipulation and appear on pages 28 to 30 of said record, inclusive, and the date of the agreement to strike this clause out is left open to proof.

That on the 10th day of January, 1874, said Delaware R. R. Construction Company commenced suit in the circuit court of Delaware County, Iowa, against the Davenport and S't Paul Railroad
394 Company and others, by placing original notice in the hands of the sheriff, and filed its petition against the same parties in said court on the 15th day of January, 1874; said suit is the one described in the record above referred. That on the 6th day of February, 1874, a decree was rendered against the Davenport and S't Paul Railroad

Company in said suit, establishing a mechanics' lien upon the portion above referred to, which is set forth on page 63 to 66 inclusive of said road, and the cause was then continued for service as to Thompson and Dennison, trustees. On the 7th day of April, a supplemental petition was filed in said suit, being that contained on page 67 and 68 of said record; execution was issued on 17th Feb., 1874, under said decree of Feb'y 6, 1874, and the property of the Davenport and S't Paul Railroad Company was sold, as shown by the copy of said execution on pages 73 to 75 inclusive, and the sheriff return to the same on pages 75 to 77 inclusive, and said sale was made on the 4th day of May, 1874, to R. Eddy, as trustee for plaintiff in said suit.

395 That Thompson and Dennison, trustees, were served with notice in said suit by publication on the 30th day of April, 1874, which notice appears in said record on page 71 to 73.

That a decree was rendered against them by default in said suit establishing said lien as to them on the 22d day of May, 1874, as shown by a copy of the same on pages 80 and 81 of said record.

That on the 23rd day of May, 1874, the said John Edgar Thompson, trustee, died.

On the 19 day of January, 1875, said property was sold by the said Delaware R. R. Construction Company to the Delaware County R. R. Company, and the said E. Eddy, trustee, conveyed the same to said Delaware County R. R. Company under the direction of said construction company, and said conveyance was duly acknowledged and afterwards recorded in the office of the *office of the* recorder of Delaware County on the 19th day of January, 1875; that the consideration for this

396 conveyance given by the Delaware County Railroad Company to the Delaware R. R. Construction Company was ($33,200) thirty-three thousand two hundred dollars in the notes of the individual members of the Delaware County Railroad Company previously received by the last-named company in payment of its subscriptions to its stock by said members, and the sum of twenty thousand seven hundred and seventy-four $\frac{73}{100}$ (20,774.73) dollars in the note of the Delaware County Railroad Company, which last-named note was by its terms due in May, 1875.

And this last named note was taken up in June, 1875, by the railroad company, by notes in the aggregate to its amount, which notes were in form the notes of the Delaware Railroad Construction Company, but whether so in fact the parties do not agree, and the parties reserve the right to take proof in reference thereto. That on the 4th day of

397 May, 1874, the sheriff of Delaware County executed to R. Eddy, as trustee, a certificate of sale of said property, a copy of which, marked Exhibit B, is annexed to the petition of the Delaware County R. R. Company filed in this court; and on the 20th day of January, A. D. 1875, R. Eddy assigned all right, title, and interest in and to the same to the Delaware County Railroad Company. That on the 4th day of May, 1874, the sheriff of Delaware County executed to R. Eddy, as trustee, a deed of said property, which was sold as being subject to appraisement, and said deed was acknowledged and afterwards recorded on the 8th day of May, 1874, in the office of the recorder of Delaware County, Iowa.

That on the tenth day of May, 1875, th sheriff of Delaware County, Iowa, by virtue of said certificate of sale and the assignment thereof by said R. Eddy, as trustee, to said Del. Co. Railroad Company, executed to said Delaware County Railroad Company a deed of said

398 property duly acknowledged, and the same was duly recorded in

the office of the recorder of Delaware County, Iowa, on the 13th day of May, A. D. 1875; a copy of said deed, marked Exhibit E, is annexed to said petition of the Delaware County Railroad Company, filed in the office of the clerk of the circuit court of the United States for the district of Iowa on or about September, A. D. 1875. That on the 26th day of January, 1875, William Dennison, surviving trustee, appeared in the suit of the Delaware Railroad Construction Company vs. The Davenport and S't Paul R. R. Company and others, and made a motion for a new trial of said suit, which motion was granted and the cause continued until next term of the Delaware circuit court, as appears from the record entry on pages 84 and 85 of said record.

That a mortgage was executed by the Davenport and S't Paul Railroad Company on all its property then owned or thereafter to be acquired to Thompson and Dennison, trustees, dated July, 1871,
399 which mortgage was recorded on the 7th day of February, 1872, and released of record on the 24th day of August, 1872, a copy of which mortgage is cont'in*u*ed on pages 139 to 156 inclusive of said record. There were also two supplemental mortgages executed by said company, which were recorded on the 25th and 28th days of March, 1872, respectively, and both released of record on the 24th day of August, 1872, as appeared by the copies of the same in said record on pages 173 to 187 inclusive.

And that on the 4th day of June, 1872, a mortgage was executed by the Davenport and S't Paul R. R. Company to the same trustees, acknowledged on the 16th day of May, 1872, and dated July 1, 1871, which said mortgage was never released of record, and a copy of which is set forth on pages 156 to 173 of said record; the validity of this mortgage is not admitted by defendants.

That at the time of the execution of said contract of 6th of August, 1870, there were individual subscriptions made and taxes
400 voted by townships in Delaware County to the Davenport and S't Paul R. R. Company in the aggregate to the amount of about one hundred thousand dollars; said subscriptions were made to the stock of said railroad company. The total subscriptions made to the capital stock of the Davenport and S't Paul Railroad Co. up to the present time, except those made by the Davenport Railway Construction Company, amount to less than two million of dollars. That from its organization up to December, 1873, F. B. Doolittle was a director and treasurer of the Delaware Railroad Construction Company, and during the same time and afterwards was the assistant treasurer of the Davenport and S't Paul Railroad Company, and was at the time of the change in the Delaware R. R. Construction Co's. contract, as aforesaid a director in the D. and S't P. R. R. Company, but was not a director in 1870 and 1871, and that the evidence of the said Doolittle, as contained in the said record on pages 121, 122, 123, 124, 126, 127, 128, 129, 130, 131, 132, and
401 133, shall be considered as evidence in this case, and either party may read the same or any part thereof as evidence on the trial of this suit.

That the articles of incorporation of the Davenport and S't Paul R. R. Co., a copy of which is set forth on pages 133 to 136 inclusive of said record, were recorded in the office of the recorder of Delaware County, Iowa, and in the office of the secretary of state in August, 1868. That all the amendments to said articles, copies of which are contained on pages 137, 138, and 139 of said record, were recorded in the recorder's office of Scott County, Iowa, and with the secretary of state; that no amendment was recorded in Delaware County.

That the Delaware Railroad Construction Company was organized as a corporation under the laws of Iowa in June, 1870, and was to continue for five years from that date.

That the Delaware Railroad Construction Company was organized as a corporation under the laws of Iowa in June, 1870, and was to continue for five years from that date.

402 That from its organization it was composed of the following stockholders, to wit, F. B. Doolittle, R. Eddy, R. Boon, A. E. Martin, C. F. Fleming, Benjamin Thorpe, and J. M. Brayton, each holding the same number of shares and the same interest as stockholders in said corporation, and that this equality of interest has continued until the present time. The office's of said company from December, 1873, until the present time have been C. F. Fleming, president; R. Eddy, treasurer; A. E. Martin, secretary; who were ex-officio directors, and composed the board of directors of said company.

That on the 18th day of January, 1875, the Delaware County Railroad Company was incorporated, composed of the following persons, also members of the Delaware Railroad Construction Company: R. Eddy, R. Boon, A. E. Martin, C. F. Fleming, Benjamin Thorpe, and J. M. Brayton. That Charles Harger, Henry Harger, and J. M. Holbrook

403 were not members of said Del. R. R. Construction Company; became also members of the Delaware County Railroad Company at its organization.

That it was not considered by the members and stockholders of the Delaware Railroad Construction Company that under its articles of incorporation said company could operate a railroad.

That F. B. Doolittle was a member of the construction company not included in the Delaware County Railroad Company. That said Doolittle has been paid nothing for his interest in the construction company except what he has received as a member of said company in common with the other members of the same, being his share of the consideration heretofore mentioned, as given by the Delaware County Railroad Company to the said construction company for the purchase of said property. That soon after the organization of the Delaware

404 County Railroad Company, Warren A. Brayton was admitted as a member and took thirty shares of stock and paid $3,000 for the same, of which sum the Delaware County Railroad Company paid $2,979.60 to redeem a portion of the Davenport and S't Paul R. R. Company from a sale under a judgment and mechanic's lien in favor of Westphal and Heinds, paramount to that claim by the Delaware R. R. Construction Company. The original stockholders of the Delaware County Railroad Company were as follows, to wit: R. Boon, 55 shares; J. M. Brayton, 55 shares; B. Thorpe, 55 shares; C. F. Fleming, 55 shares; R. Eddy, 55 shares. And these were also members of the Delaware R. R. Construction Company, and the following persons not members of that company: Warren A. Brayton, 30 shares; Charles Harger, now deceased, and his interest held by his administratrix, 1 share;

405 Henry Harger, 1 share; J. M. Holbrook, 1 share. And the above-named persons hold the above-named shares in the Delaware County Railroad Company.

That with the exception of Warren A. Brayton, as aforesaid, all the other members of the Delaware Co. R. R. Company paid for their subscriptions to the stock of said company with their individual notes to the amount of their respective shares as above named. That J. M. Holbrook and Henry Harger have been, respectively, president and treasurer of the Delaware County Railroad Company, and Benjamin

Thorpe and R. Boon directors of the same from its organization to the present time, and that the president and secretary and treasurer of said company were ex-officio directors of said company.

That Charles Harger was the original secretary, but having died in June, 1875, A. E. Martin was appointed in August, 1875, secretary
406 of said Delaware County R. R. Company in the place of said Charles Harger, and still holds that position. That J. M. Brayton, above named, a stockholder in both companies, wrote the articles of incorporation of both the Delaware R. R. Construction Company and the Delaware Co. R. R. Company; was the attorney for the construction company that brought the suit on which the sale was made; was present at the sale; was the attorney of the construction company from the beginning to the end of the case, and appeared in court as such attorney. When the judgment was obtained against Thompson and Dennison on 22 May, 1874, after the sale made on the 4th of May previous, was the attorney for said company, and was present when the motion was made for a new trial in said cause on the 26th day of January, 1875; was present when the motion was made to transfer the cause to the federal court at May term, 1875, after that motion was overruled.

407 And it is further agreed by the said parties that the articles of incorporation of the several companies herein mentioned may be shown in evidence by copies thereof duly certified by the proper recorder, the secretary of state. And that copies of any records of the district or circuit court duly certified by the clerk thereof may be introduced by either party, and either party may take testimony as to any matters in this cause up to the first day of May, 1876.

The parties reserve the right to object to the evidence of F. B. Doolittle or any other party, or to any facts agreed upon, on the grounds of incompetency or irrelevancy.

Dated Feb. 3d, 1876.

(S'g'd) GRANT AND SMITH,
For Meyer and Dennison.
J. M. BRAYTON,
For Delaware R. R. Construction Co. and Del. Co. R. R. Co.

(Endorsed:) In U. S. cir. c't, dist. of Iowa. Moses De Witt Loomis vs. D. and S't P. R'd Co. Stipulation. Filed Mar. 25, 1876. E. R. Mason, clerk.

408 Deposition of witness produced, sworn, and examined in pursuance of the annexed notice, at Davenport, in the county of Scott and State and district of Iowa, before me, a United States commissioner for the district of Iowa, in a certain action now pending in the circuit court of the United States for the district of Iowa, wherein Moses De Witt Loomis and others are plaintiffs, and the Davenport & S't Paul Railroad Company and others are defendants, on behalf of Myer & Dennison, parties plaintiff.

HIRAM PRICE, being produced and sworn on behalf of plaintiffs, deposed as follows:

409 My name is Hiram Price; age, sixty-two years; residence, Davenport, Iowa, and occupation nothing in particular.

I was president of the Davenport & S't Paul Railroad Company. I took the presidency in the fall of 1869, and continued until fall of 1871. I think I left the road in October, 1871. I made a contract with the Delaware Railroad Construction Company for the bridging, tiring, and

grading the Davenport & S't Paul Railroad through Delaware County, Iowa. I think I made the contract about August, 1870. I believe the contract was in writing. The work under that contract was to be paid by money raised by the people of Delaware County; that is, the people of that county agreed, if we put the road under contract in that
410 county, to raise money sufficient to grade, bridge, and tie the same through the county.

Question. Was it the understanding of yourself, as president of the Davenport & S't Paul Railroad Company, that all the work & materials furnished under that contract by the Delaware Railroad Construction Company was to be paid for exclusively by the subscription of the people of Delaware County?

(Defendants objection to the question as incompetent and irrelevant.)

Answer. It was my understanding that all this work and material was to be paid for in that manner; and I would not at that time have put the road under contract in that county if it had been expected that I, as president of the Davenport & S't Paul Railroad Company,
411 would have been required to use their or my efforts in raising the money.

I do not remember of ever having a conversation with the officers of the Delaware Railroad Construction Company as to the meaning of that contract; I might have had. I presume there was correspondence; I do not recollect it; the letter books should show.

I gave them a very clear intimation of my meani'g of the contract when I said in it, "All the money for the work hereinbefore specified to be paid by the citizens of Delaware County." That is the conditlon I annexed to the contract, & I would not have signed it without.

I think I acted upon this throughout during my administration as president. I am not aware that any money was paid under that
412 contract except as obtained from these subscriptions; if any was paid otherwise, it was not as a matter of right, but as an accommodation.

Cross-examination:

At the time of making the contract, I do not know whether there had been an estimate made by an engineer.

I do not think there was any change in the plans of cuts and fills during my administration.

The executive committee of the Davenport & S't Paul Railroad Company authorized F. B. Doolittle, assistant treasurer of the company, to receive the money voted by tax in Delaware County to the railroad company from the treasurer of that county.

I think myself & the executive committee insisted that the engineering in Delaware County should be paid for out of the funds raised
413 in Delaware County, but will not say positively that the engineer did not receive any money from any other source. I think the engineers were paid something out of the Delaware County fund.

Redirect:

Some of the people of Delaware County, among the number M'r F. B. Doolittle, came to me at various times and wanted the railroad continued through that county, and held out inducements that they could raise sufficient funds to grade, bridge, and tie the road; and these were the circumstances which brought about the making this contract.

I presume I had several conversations with M'r Doolittle & others before making the contract, but, while I cannot recollect the conversa-

tion distinctly, I know I never agreed to make the contract
414 upon any other terms than the condition that the people of that county should raise sufficient funds to grade, tie, & bridge, but when they sent me the contracts to sign they did not have these condition inserted, so I inserted it before signing.

Question. Please state the circumstances under which M'r Doolittle was authorized by you to receive the taxes voted to the Davenport & S't Paul Railroad Company in Delaware County.

Answer. He was authorized to receive them because it was a tax voted in Delaware County, and should be made available for the construction of the road through that county. I do not know what was done with the money. I never saw it. I suppose it went to the
415 Delaware Railroad Construction Company, but I don't know it. I could not know it unless I paid over or saw it paid over. It was my intention, in giving the order, that it should be paid over to the Delaware Railroad Construction Company. I did not intend by giving M'r Doolittle that order to waive any rights under that contract.

Recross-examination:

I spoke of Doolittle & others coming to me. I did not intend by this to convey the meaning that they were the members of or represented the Delaware Railroad Construction Company, but I supposed they were citizens of Delaware County.

I understood and now think the contracts were sent to me by the Delaware Railroad Construction Company, but it did not contain
416 that condition, but I added it before signing and returned it. When I referred to the contracts being sent me, I do not mean that they were sent to me by all the persons who came to see me about constructing the road through Delaware County.

(S'g'd) H. PRICE.

Sworn to before me and subscribed in my presence by the said Hiram Price this 26th day of April, A. D. 1876.

W'M K. WHITE,
United States Commissioner, District of Iowa.

UNITED STATES OF AMERICA,
District of Iowa, ss:

I, William K. White, a United States commissioner for the district of Iowa, do hereby certify that, in pursuance of the annexed notice, I caused to come before me, at my office in the city of Davenport, in the county of Scott and State and district of Iowa, on the 26th day
417 April, A. D. 1876, between the hours of four and seven o'clock p. m. of said day, Hiram Price, who was then and there by me duly sworn and examined, and his examination reduced to writing, and, after being by me read over to said witness, the same was subscribed and sworn to by him in my presence, and his said deposition is now herewith returned.

And I further certify that Mess'rs Grant & Smith were present and conducted said examination on behalf of Meyer & Dennison, plaintiff', and J. M. Brayton, esq., was present and cross-examined said witness on behalf of the defendants, Del. Co. R. R. Co. & Delaware Railroad Construction Company.

Given under my hand and official signature, at Davenport, in
418 said district of Iowa, this 26th day of April, A. D. 1876.

W'M K. WHITE,
United States Commissioner, District of Iowa.

Commissioner's fees, $5, paid by Grant & Smith.

In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS ET AL.
vs.
THE DAVENPORT & S'T PAUL RAILROAD COMPANY ET AL.

To the Delaware Railroad Construction Company and the Delaware County Railroad Company:

You will take notice that, on Thursday, the 26th day of April, A. D. 1876, the plaintiff', Lewis H. Meyer and William Dennison, will
419 take the deposition of Hiram Price, to be used as evidence on the trial of the above cause, before W. K. White, a United States commissioner for the district of Iowa, at his office in Davenport, Iowa, beginning at 4 o'clock on said day and then to continue until said deposition shall be completed.

(S'g'd) GRANT & SMITH,
Attorneys for Meyer & Dennison.

Due & legal service of the foregoing notice accepted and time waived.
J. M. BRAYTON,
Att'y for Del. Co. R. R. Co. & Del. R. R. Con. Co.

(Endorsed:) In the circuit court of the U. S. Moses De Witt Loomis et al. vs. Dav. & S't Paul R. R. Co. et al. Deposition of Hiram Price. Filed May 13, 1876. E. R. Mason, clerk.

Com's fees, $5, paid by Grant & Smith.

420 In circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS
vs.
THE DAVENPORT AND S'T PAUL RAILROAD COMPANY ET AL.

It is agreed between the Delaware Railroad Construction Company and the Delaware County Railroad Company and Lewis H. Meyer and William Dennison, trustees in said suit, that the mortgage not released, and contained on pages No. 156 to 173, inclusive, of the record referred to in the former stipulation in this case, was recorded in the office of the recorder of Delaware County, Iowa, on the fourth day of June, A. D. 1872, and that the filing as shown on pages 173 is correct.

May 26, 1876.

(S'g'd) J. M. BRAYTON,
For the Del. Co. R. R. Co. and the Del. R. R. Construction Co.
GRANT,
For Meyer and Dennison.

421 (Endorsed:) 552. Moses De Loomis vs. The D. and S't P. R. R. Co. et al. Agreement as to recording mortgage in Delaware County. Filed May 26, 1876. E. R. Mason, clerk. Grant and Smith, for trustees. J. M. Brayton, for D. R'y Con. Co. and D. Co. R'y Co.

422 EXHIBIT D.

Certificate of sheriff's sale.

To whom it may concern:

I, Abner Dunham, sheriff of Delaware County, Iowa, hereby certify that by virtue of a writ of special execution to me directed, dated February 17, A. D. 1874, and issued out of the clerk's office of the circuit court of the State of Iowa, in and for Delaware County, upon a judgment and decree rendered in said court on the 6th day of February, A. D. 1874, in favor of the Delaware Railroad Construction Company and against the Davenport and S't Paul Railroad Company for the sum of fifty-one thousand nine hundred and thirty $\frac{54}{100}$ dollars debt, and one hundred and twenty-one $\frac{30}{100}$ dollars cost, I did, on the 17th day of February, A. D. 1874, levy upon the following-described property, to wit:

423 All that portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of way, the road-bed, the track, depot buildings, side tracks, and land on which the same are situated, and all fixtures connected with said grounds and buildings, and all the right, title, and interest of the said Davenport and S't Paul Railroad Company in and to the land upon which the said improvements are situated, as the property of the said Davenport and S't Paul Railroad Company, to satisfy the said special execution, amounting to fifty-one thousand nine hundred and thirty $\frac{54}{100}$ dollars debt, and one hundred and twenty-one $\frac{30}{100}$ dollars costs, together with interest and accruing costs thereon; that I gave four weeks' notice of the time and place of selling said above-described

424 property under said execution, by posting up three notices thereof at three public places in said county, one of which was at the court-house in Delhi, where the last district court was held, and by causing two publications of said notice to be made in the Delhi Monitor, a newspaper printed at Delhi, in said county, immediately before the time of sale.

That in pursuance of the notice of sale aforesaid in conformity to law, and by virtue of said special execution, I did, on the 4th day of May, A. D. 1874, at 10 o'clock in the forenoon of said day, at the door of the court-house in Delhi, expose and offer the said property for sale at public auction, and R. Eddy, treas. of said plaintiff, in trust for said plaintiff, then and there bid the sum of fifty-three thousand and one hundred dollars for the same, and that being the highest and best bid offered for said property, the same was then and there openly struck off and sold to the said R. Eddy, treas. of plaintiff, in trust for said plaintiff, for the sum of ($53,100.00) 53,100 dollars, who then and

425 there paid the amount of his bid to me in cash.

Now, unless redemption is made within one year after the date of said sale, according to law, the said R. Eddy, treas., in trust as aforesaid, his heirs or assigns, will be entitled to a deed for the said property sold as aforesaid, and described as follows, to wit: All that portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of way, the road bed, the track, depot buildings, side tracks, and land on which the same are situated, and all fixtures connected with said grounds and buildings, and all the right, title, and interest of the said Davenport and S't

Paul Railroad Company in and to the land upon which the said improvements are situated.

In witness whereof I have hereunto set my hand this 4th day of May, A. D. 1874.

(Signed) ABNER DUNHAM,
Sheriff of Delaware County, Iowa.

426 For value received, I hereby assign to the Delaware County Railroad Company all my right, title, and interest to the within-described property and certificate, and all the right, title, and interest of the Del. Railroad Construction Company thereto this January 20, 1875.

(S'g'd) R. EDDY,
Trustee for the Del. Railroad Construction Co.

(Endorsed:) Certificate of sheriff's sale. Sheriff of Delaware County to R. Eddy, treas., in trust for Del. R. Con. Co. Deed made to the Del. Co. R. R. Co. May 10, 1875. Abner Dunham, sh'ff Del. Co., Iowa. Filed and read on hearing May 26, '76. E. R. Mason, clerk.

427 Know all men by these presents that I, Rensselaer Eddy, treasurer of the Delaware Railroad Construction Company, and trustee for said company of the following-described property, for the consideration of fifty-three thousand nine hundred and seventy-four dollars and seventy-three cents, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto the Delaware County Railroad Company the following described property, to wit:

All that portion of the Davenport and S't Paul Railroad situated in Delaware County, Iowa, being the part lying between the north line and south line of said Delaware County, as said road is laid and operated, including the right of way, the road bed, the track, depot buildings, side tracks, and land on which the same are situated, and all fixtures connected with said grounds and buildings, and all the right, title, and interest conveyed or received by me in or to the land upon
428 *upon* which said improvements are situated, by virtue of a sale to me by the sheriff of Delaware County, Iowa, on the 4th day of May, A. D. 1874, under an execution against the Davenport and S't Paul Railroad Company, and I sell and convey to said Delaware County Railroad Company all the interest in or to any property derived by me at said sale, both legal and equitable.

To have and to hold unto itself and its grantees forever.

Witness my hand this 19th day of January, A. D. 1875.

(Signed) RENSSELAER EDDY,
Treasurer and Trustee of the Delaware Railroad Construction Company.

STATE OF IOWA,
Delaware County, ss:

On this 19th day of January, A. D. 1875, before me, J. B. Satterlee, clerk of the district court of Delaware County, Iowa, personally appeared Rensselaer Eddy, treasurer and trustee of and for the
429 Delaware Railroad Construction Company, to me personally known to be the identical person whose name is affixed to the foregoing deed as grantor, and acknowledged the same to be his free and voluntary act and deed.

Witness my hand and official seal the date above written.

[SEAL.] (S'g'd) J. B. SATTERLEE,
Clerk of District Court of Delaware County, Iowa.

(Endorsed:) Rensselaer Eddy, treasurer and trustee of Del. Railroad Construction Company, to Delaware County Railroad Company. Deed. Filed for record the 19th day of January, A. D. 1875, at 4 p. m., and recorded in book H of town lots, on page 419. (S'g'd) H. C. Jackson, recorder. Entered for taxation January 19, 1875. J. B. Bagg, county auditor. Filed and introduced on hearing May 26, 1876. E. R. Mason, clerk.

430 This indenture, made the fourth day of May, A. D. 1874, by and between Abner Dunham, sheriff *old* Delaware County, Iowa, of the first part, and R. Eddy, treas., in trust for the Delaware Railroad Construction Company of Delaware Co., in the State of Iowa, of the second part, witnesseth:

That whereas, by virtue of a certain writ of execution issued from the office of the clerk of the circuit court of said Delaware County on the 17th day of February, A. D. 1874, duly attested by said clerk and under the seal of said court, directed to the sheriff of said county of Delaware, commanding him that of the goods, stock, or interest in any company, debts due, property in the hands of third persons, land, and tenements (which are not exempt by law from execution) of the defendant, he, the said sheriff, should cause to be made, according to the statute in such case made, provided, the sum of fifty-one thousand nine hundred and thirty dollars and fifty-four cents, with interest and
431 costs on a certain judgment recorded in said circuit court on the 6th day of February, 1874, in a suit therein pending, wherein the Delaware Railroad Construction Company was plaintiff and the Davenport and S't Paul Railroad Company and others were defendants;

And whereas by virtue of said writ of execution the real estate hereinafter described was levied upon and taken as the property of the said defendant, the Davenport and S't Paul Railroad Company, on the 17th day of February, A. D. 1874, and advertised for sale—four weeks' notice of the time and place of said sale having been previously given according to the statute in such case made and provided—by posting up a printed notice thereof at the court-house where the last district and circuit courts was held, to wit, in the village of Delhi, in said county, and one in Oneida Township, a public place in the township where the said real estate is situated, and one in Milo Township, being three
432 public places in the said Delaware County, and by publishing a notice thereof for two consecutive weeks preceding the day of the sale in the Delhi Monitor, a newspaper published in the said county of Delaware, a copy of which notice being hereto attached;

And whereas said lands were, on the 4th day of May, A. D. 1874, duly appraised, as provided by law, by two disinterested householders, one of whom, to wit, William Price, was chosen by the plaintiff, and the other, Albert Bonner, was chosen by the clerk of the district court of Delaware County, Iowa, the defendant having failed to choose an appraiser after notice to choose an appraiser for three days, given by said sheriff, the valuation of said lands by said appraisers was by them sworn to, and the same was appraised as follows: at seventy-eight thousand three hundred and sixty-two dollars;

433 And whereas the said Abner Dunham, sheriff as aforesaid, did, on the 4th day of May, A. D. 1874, at the hour of 10 o'clock in the forenoon of said day, at the door of the court-house in said county of Delaware, in conformity with the statute and in obedience to said writ of execution and the notice given as aforesaid, expose and offer for sale at public auction the real estate hereinafter described, and did then

and there sell the same at public auction to R. Eddy, treas., in trust for the Delaware Railroad Construction Company, for the sum of fifty-three thousand and one hundred dollars, he being the highest bidder therefor and that being the highest sum bid for the same:

Now, therefore, this indenture witnesseth:

That in consideration of the foregoing premises and of the payment of said sum of fifty-three thousand one hundred dollars bid by the said R. Eddy, treas. of and in trust for said plaintiff, and the further
434 sum of one dollar for this conveyance to me in hand paid, the receipt whereof is hereby acknowledged, I, the said Abner Dunham, sheriff as aforesaid, party of the first part, have bargained and sold, and by these presents do grant, bargain, sell, and convey unto the said R. Eddy, treas. of said plaintiff in trust for said plaintiff, party of the second part, his heirs and assigns forever, the following described tract of real estate situated in the county of Delaware and State of Iowa (being the same real estate hereinbefore referred to), to wit: All that portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county as the same is laid and operated, including the right of way, the road-bed, the track, depot buildings, side-tracks, and land on which the same are situated, and all fixtures connected with said grounds and
435 buildings, and all the right, title, and interest of the said Davenport and S't Paul Railroad Company in and to the land upon which the said improvements are situated:

To have and to hold the said real estate, with all the appurtenances thereunto belonging to the said second party, and to his heirs and assigns forever, as fully and absolutely as the said party of the first part by virtue of the foregoing premises might and could sell and convey the same.

In witness whereof the said party of the first part has hereunto set his hand and seal this fourth day of May, A. D. 1874.

(S'g'd) ABNER DUNHAM,
Sheriff of Delaware County.

STATE OF IOWA,
Delaware County, ss:

Be it remembered that on this 4th day of May, A. D. 1874, before the undersigned, clerk of circuit court in and for said county of Dela-
436 ware, personally came Abner Dunham, sheriff of Delaware County, Iowa, personally known to me to be the identical person whose name is subscribed to the foregoing deed as grantor, and acknowledged the instrument to be his voluntary act and deed, and that as sheriff of Delaware County aforesaid he executed the same for the purposes therein mentioned.

Witness my hand and seal the day and year last above written.

(Copy of notice.)

[SEAL.] (S'g'd) G. B. BEVERIDGE, *Clerk*,
By H. C. HABERLE, *Dep'ty.*

(Endorsed:) Filed and read on hearing May 26, '76. Mason, clerk. Sheriff's deed. Sheriff of Delaware Co. to R. Eddy, treas., in trust for Del. R. Con. Co. State of Iowa, Delaware County. Filed for record the 8th day of May, A. D. 1874, at 10½ o'clock a. m., and recorded in book H of town-lot deed record, on pages 350, 351, 352. Henry Harger, recorder, by J. L. Stone, deputy. Delaware County Union Print, Manchester, Iowa. Entered for taxation May 8, 1874. J. B. Baggs, auditor, by T. A. Twiss, deputy. $1.00 paid.

437 This indenture made the tenth day of May, A. D. 1875, by and between Abner Dunham, sheriff of Delaware County, Iowa, of the first part, and The Delaware County Railroad Company, of the county of Delaware, in the State of Iowa, of the second part, witnesseth:

That whereas by virtue of a special execution directed to Abner Dunham, the then acting sheriff of Delaware County, Iowa, dated the seventeenth day of February, A. D. 1874, and issued out of the clerk's office of the circuit court of the State of Iowa in and for Delaware County, Iowa, under the seal of said court, upon a judgment and decree rendered in said circuit court on the sixth day of February, A. D. 1874, in favor of the Delaware Railroad Construction Company and against the Davenport and S't Paul Railroad Company for the sum of fifty-one thou-

438 sand nine hundred and thirty ($51,930) and fifty-four ($ .54) cents debt, and one hundred twenty-one ($121.30) dollars and thirty cents costs, the said Abner Dunham, sher.ff as aforesaid, did, on the seventh day of February, A. D. 1874, levy upon the real estate hereafter described as the property of the said Davenport and S't Paul Railroad Company, defendant, to satisfy the said special execution amounting to fifty-one thousand nine hundred and thirty dollars and fifty-four cents debt and one hundred twenty-one dollars and thirty cents costs, together with interest and accruing costs;

And whereas the said Abner Dunham, sheriff as aforesaid, gave four weeks' notice of the time and place of selling said real estate under said execution by posting up written and printed notices thereof at three public places in said Delaware County, one of which was at the court-house in Delhi, where the last district court was held, and by causing two publications of said notice to be made in the Delhi Monitor, a newspaper printed at Delhi, in said county, immediately preceeding the day of sale;

And whereas the said Abner Dunham, as sheriff aforesaid, in pursuance of the notice of sale aforesaid, in conformity to law, and by virtue

439 of said execution and the written notice of the defendant that he elected to have said real estate sold subject to redemption, did, on the fourth day of May, A. D. 1874, at the hour of 10 o'clock in the forenoon of said day, at the door of the court-house in Delhi, expose and offer for sale at public auction the real estate hereinafter described, and did then and there sell the same at public auction to R. Eddy, treasurer of said plaintiff, in trust for said plaintiff, for the sum of fifty-three thousand, one hundred dollars, he being the highest and best bidder therefor, whereupon the said sheriff, after receiving the said sum of money from said purchaser, made and delivered to him a certificate of sale as directed by law;

And whereas the time allowed by law for redeeming said premises having expired without any redemption thereof having been made, and the said plaintiff, the Delaware Railroad Construction Company did, on the 20th day of January, A. D. 1875, assign said certificate of sale to the Delaware County Railroad Company in words and figures following, to wit:

440 For value received, I hereby assign to the Delaware County Railroad Company all my right, title, and interest to the within-described property and certificate, and all the right, title, and interest of the Del. Railroad Construction Company thereto, this January 20th, 1875.

(S'g'd) R. EDDY,
Trustee for Del. Railroad Construction Co.

Now, therefore, this indenture witnesseth:

That in consideration of the premises and of the said sum of fifty-three thousand one hundred dollars so bid and paid as aforesaid, the receipt whereof is hereby acknowledged, I, the said Abner Dunham, sheriff as aforesaid, party of the first part, do hereby sell and convey unto the said Delaware County Railroad Company, party of the second part, his heirs and assigns forever, the following described real estate situated in the county of Delaware and State of Iowa (being the same real estate hereinbefore referred to), to wit, all that portion of the
441 Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county as the same is laid and operated, including the right of way, the road-bed, the track, depot-building, side tracks, and land on which the same are situated, and all the fixtures connected with said grounds and buildings, and all the right, title, and interest of the said Davenport and S't Paul Railroad Company in and to the land upon which the said improvements are situated:

To have and to hold the said real estate, with all the appurtenances thereunto belonging, to the said Delaware County Railroad Company, its heirs and assigns, forever, as fully and absolutely as the said party of the first part by virtue of the premises might and could sell and convey the same.

In witness whereof the said party of the first part has hereunto
442 set his hand this tenth day of May, A. D. 1875.

(Signed) ABNER DUNHAM,
Sheriff of Delaware County, Iowa.

STATE OF IOWA,
Delaware County, ss:

Be it remembered that on this tenth day of May, A. D. 1875, before the undersigned, a in and for said county, came Abner Dunham, to me personally known to be the identical person whose name is subscribed to the foregoing sheriff's deed as grantor, and acknowledged the instrument to be his voluntary act and deed, and that he executed the same for the purposes therein mentioned.

Witness my hand and official seal the day and year last above written.

[SEAL.] (Signed) J. B. SATTERLEE,
Clerk Circuit Court.

443 STATE OF IOWA,
Delaware County, ss:

Be it remembered that on this 19th day of July, A. D. 1875, before the undersigned, a clerk of the district court in and for said county, came Abner Dunham, to me personally known to be the identical person whose name is subscribed to the foregoing sheriff's deed as grantor, and acknowledged the instrument to be his voluntary act and deed, and that he executed the same for the purposes therein mentioned.

Witness my hand and official seal the day and year last above written.

[SEAL.] (Signed) J. B. SATTERLEE,
Clerk District Court Del. Co, Iowa.

444 (Endorsed:) Filed and read on hearing. May 26, '76. E. R. Mason, clerk. Sheriff's deed. Sheriff of Delaware County to Delaware County R. Co.

STATE OF IOWA,
Delaware County :

Entered for taxation this 13th day of May, A. D. 1875.
(S'g'd) J. B. BAGGS, *Auditor*,
By T. A. TWISS, *Deputy.*

Transfer fee $\frac{25}{100}$ paid.

Filed for record this 13 day of May, A. D. 1875, at 5 o'clock p. m., and recorded in book L of sheriff's deeds on page 9th.
H. C. JACKSON, *Recorder.*

Deputy.

Recording fee $1.00, paid by Cha's Harger.
All fees must be paid in advance, as follows: For recording any deed containing 400 words or less, 50 cents; every additional 100 words or part thereof, 10 cents; auditor's fees for transfer, 25 cents.

Filed for record the 20th day of July, 1875, at 8.10 o'clock a. m., and recorded in book L on page 10 of sheriff's deeds.
(S'g'd) H. C. JACKSON, *Recorder.*
Rec. fee $1.00, paid by A. E. Martin.

445 DAVENPORT AND S'T PAUL RAILROAD.

This agreement made and concluded this sixth day of August, one thousand eight hundred and seventy, between the Delaware Railroad Construction Company, of the first part, and the Davenport and S't Paul Railroad Co., of the second part, witnesseth:

The aforesaid party of the first part, in consideration of the prices hereinafter agreed to be paid by the party of the second part, hereby covenants and agrees to grade and construct all of the line between the south and north line of Delaware County of the Davenport and S't Paul Railroad in such manner as shall conform in every respect to the annexed specifications, which shall be considered as part of this contract, and to the following conditions:

1. The work shall be commenced within sixty days after the ex-
446 ecution of this contract, and shall be completed on or before the day of , one thousand eight hundred and .

2. The work shall be executed under the direction and supervision of the engineer of the company for the time being, by whose measurements and calculations the amounts of the several kinds of work performed under this contract shall be determined, and who shall have full power to reject or condemn all work or materials which in his opinion do not fully conform to the spirit of this agreement, and shall decide all questions which may arise between the parties relative to the execution thereof, and his decision shall be final and binding upon both parties.

3. It is further agreed that this contract in every respect shall be prosecuted in such order and at such places and parts of the work and at such times and seasons as the said engineer may direct, also in
447 reference to a proper and economical use of materials for the work; and any unnecessary waste of materials shall be made good by the said contractor.

4. And the said contractors further promise and agree that they will not of themselves or by their agent or agents give or sell any ardent spirits to their workmen or any other person on or near the line of said railroad, or allow any to be brought on the work by the laborers or any

other person, and will do all in their power to discountenance its use in the vicinity of the work by persons in their employ.

6. Any omission to disapprove of defective work at the time of any estimate shall not be construed as an acceptance of said work.

7. If the party of the first part refuses or unreasonably neglects to remedy any imperfection which may be pointed out by the engi-
448 neer, or by the party of the second part, or fails to prosecute the work with the required despatch, or in any manner violates the conditions of this contract, so that in the judgment of the engineer or in the judgment of the party of the second part there may be just grounds of apprehension that the work will not be completed in the manner or within the time herein specified, then the engineer or said party of the second part may serve a written notice upon said party of the first part specifying the manner and time in which said party shall cause such grounds of apprehension to be removed, and if at the expiration of said time said grounds of apprehension are not removed, then full power and authority is hereby vested in said engineer or in said party of the second part to declare this contract forfeited, and on such declaration being given in writing by the engineer or by said party of the second
449 part to the party of the first part, or if said notice shall be given by the engineer then to the parties hereto, this contract shall cease immediately, and the said party of the second part shall be entitled to the reserved percentage as a consideration for the damages that may be sustained by reason of the forfeiture of this contract. All fences must be kept up so as not to allow cattle to escape or crops to be destroyed.

In consideration of the faithful performance of all the conditions of this contract, the party of the second part agrees to pay said party of the first part, on the estimate of the engineer, as follows:

For grubbing, cleaning, and side chopping the section as specified, per acre, ten dollars.

For earth excavation at the rate of twenty (20) cents per cubic yard.

For excavation of rock, including stone measuring over one cubic yard, at the rate of one dollar for solid rock per cubic yard. Loose rock, seventy cents per cubic yard.

450

cents per cubic yard.
dollars per cubic yard.
dollars per cubic yard.
dollars per cubic yard.
dollars per cubic yard.
dollars p'r m. f't board m'sure.

For timber and plank in bridges and wood culverts at the rate of thirty-five ($35.00) dolls. p'r m. f't, board m'sure.

For piles in foundations at the rate of—	Fifty cents per foot for all piles twenty feet long or less, and sixty cents per foot for all piles over twenty feet long.	Per lineal foot.
For piles in bridges at the rate of—		Per lineal foot.

To be one foot in diameter at center, and may be black walnut, red elm, white oak, or bur oak.

For wrought-iron in bridges at the rate of—	Iron to be furnished by the party of the second part.	cents per pound.
For cast iron in bridges at the rate of—		cents per pound.

For ties fifty-five cents, each, to be eight feet long and six inches
451 thick, one-fourth to have at least nine, one-fourth eight, one-fourth seven, and one-fourth six inches face, and may be white oak, bur-oak, black-oak, red-elm, black-walnut, and white-walnut, but not more than one-fourth black-oak, and to be delivered on the line at most convenient points in view of hauling, and to be designated by engineer.

The prices above specified are to be in full compensation for all the materials and labor required to put the same into the work herein contracted for, and complete the same in all respects as provided in this contract.

In order to enable the contractor to prosecute the work advantageously the said engineer shall make an estimate from time to time, not oftener than once per month, as the work progresses, both on work done and materials delivered on the line of said railroad. The said party of the second part will pay in current money eighty per cent. of the
452 amount of said estimate; twenty (20) per cent. of the estimates as they are made to the party of the first part may be retained by the party of the second part as damages in case of a forfeiture of this contract, which said twenty (20) per cent., together with the whole amount of this contract, according to the terms thereof, and on the estimate of the engineer, shall be paid to the party of the first part within thirty days after all the work herein contracted for is completed and accepted by the engineer qualified below.

The above payments on estimates shall be made every thirty (30) days at the office of the president of said Davenport and S't Paul Railroad Company in Davenport. The Davenport and S't Paul Railroad Company may stop all work at any time without payment of damages by giving thirty days' notice.

Whenever five consecutive miles of work from the south line of
453 Delaware County are completed by the party of the first part, and accepted by the party of the second part, the party of the second part shall pay the full amount of the contract price for said work on said five miles within thirty days after said work is accepted, without the deduction of said twenty per cent., and for every additional five consecutive second miles of the south end of the work completed by said first party, said party shall pay in like manner, within thirty days after the same has been accepted, and so on through the county from south to north.

Signed this 6th day of August, A. D. 1870.

(S'g'd) R. EDDY,
Pres.

" M. BRAYTON,
Sec'y.

" F. B. DOOLITTLE.
Treas. Board of directors of
Delaware Railroad Construction Company.

All the money for the work hereinbefore specified to be paid
454 by the citizens of Delaware County.

(S'g'd) H. PRICE,
Pres't Dav. and S't Paul R. R. Co.

(Endorsed:) 18 . Davenport and S't Paul Railroad contract for grading. With . Section . Introduced on trial and filed May 26, 1876. E. R. Mason, clerk.

455 Afterwards, to wit, on the 8th day of June, the same being of

the May term, 1876, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

456 United States circuit court, district of Iowa. May term, 1876.
Thursday, June 8, 1876.

MOSES DE WITT LOOMIS, LEWIS H. MEYER, and WILLIAM DENNISON,
vs.
THE DAVENPORT S'T PAUL RAILROAD COMPANY, The Delaware Railroad Construction Company, and The Delaware County Railroad Company, and others. } No. 552. Eq.

So much of this cause came on now to be heard as relates to the controversy between the trustees of the mortgage set out in the petition, and the claim of the Delaware Railroad Construction Company and the Delaware County Railroad, claiming, under a judgment in the circuit court of Delaware County, Iowa, a mechanic's lien. Grant for
457 the pl'ffs and Brayton for the said defendants.

The cause is heard upon bill, amendments, answer, replications, cross-bills, answer, replications, evidence, and stipulations of counsel filed in this court; and the court finds upon the evidence that the lien of the trustees under the mortgage is superior to the lien and title claimed by the defendants under the State-court judgments, and the court doth order, adjudge, and decree that the judgment of the Delaware circuit court of the State of Iowa, rendered on the 6th day of January, 1874, and the judgment of said circuit court rendered on 22nd day of May, 1874, and on the 21st day of , 1875, against Thompson and Dennison, trustees by default, and all other judgments against them in said cause are, as against the said parties under said mortgage,
458 utterly null and void as a prior lien on the property named therein, and the same and the deed made to said defendants is ordered and adjudged as against the rights of said mortgages to be cancelled and declared for naught, and it is ordered and adjudged that said Delaware Railroad Construction Company and said Delaware County Railroad Company reconvey the premises described in their deed under the sheriff's sale to said trustees and their assigns under the foreclosure sale within sixty days, or that in default thereof this decree stand for such reconveyance, and that they pay the costs of this suit, so far as the same relates to their continuing in this cause.

And thereupon said Delaware County Railroad Company and
459 said Delaware Railroad Construction Company pray that an appeal to the Supreme Court of the United States from said decree and every part thereof; which said appeal is allowed and granted them upon the condition that said parties asking said appeal file in this court a bond for said appeal in the penal sum of one thousand dollars within sixty days from this date, said bond to be approved by one of the judges of this court.

460 Afterwards, to wit, on the 13th day of July, 1876, said Delaware Co. R. R. Company and Delaware R. R. Construction Company, by their said att'ys, filed in said clerk's office their appeal bond in said cause; which said appeal bond is in the words and figures following, to wit:

461 Know all men by these presents that we, Samuel Allison, j'r, and Riley Holdridge, citizens and residents of the county of Delaware and State of Iowa, with post-office at Delhi, in said State, are held and firmly bound unto Lewis H. Meyer and William Dennison, trustees, and to the plaintiffs in the suit hereinafter mentioned, and each and every one of said plaintiffs, in the full and just sum of one thousand dollars, lawful money of the United States, to be paid to said Lewis H. Meyer and William Dennison, trustees, or their certain attorney, successors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this fifth day of July, in the year of our Lord one thousand eight hundred and seventy-six (A. D. 1876). Whereas lately, at a term
462 of the circuit court of the United States for the district of Iowa, in a suit in said court depending, entitled Moses De Witt Loomis et al. vs. The Davenport and S't Paul Railroad Company et al., in a controversy between Lewis H. Meyer and William Dennison, trustees, as plaintiffs, and The Delaware Railroad Construction Company and The Delaware County Railroad Company as defendants, a decree was rendered against said last-named defendants and in favor of said Lewis H. Meyer and William Dennison, trustees, on or about the eight' day of June, A. D. 1876, and the said Delaware Railroad Construction Company and the said Delaware County Railroad Company have appealed, or are about to appeal from said decree, and each and every part thereof, to the Supreme Court of the United States, to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the Delaware Railroad Construction Company and the Delaware County
463 Railroad Company above named shall prosecute said appeal to effect and cause said decree of said circuit court to be reversed by said Supreme Court, and answer and pay all costs and damages that may be adjudged or decreed to be paid by them or either of them by said Supreme Court, and all costs and damages if they fail to make good their plea, and shall satisfy and perform the judgment or decree appealed from in case it shall be affirmed, or in case it shall not be reversed, and shall pay any order, judgment, or decree which said Supreme Court may render in said case, or order to be rendered by said circuit court of the United States for the district of Iowa; and if they shall make good their said appeal and reverse said decree of said circuit court of the United States for the district of Iowa, then this obligation to be void, else to remain in full force and virtue.

464 [SEAL.] (Signed) SAMUEL ALLISON, J'R.
[SEAL.] " RILEY HOLDRIDGE.

Sealed and delivered in presence of—
J. B. BAGGS.
G. W. I. HAWES.

UNITED STATES OF AMERICA,
District of Iowa:

I, Samuel Allison, jr., being duly sworn, say that I am worth at least three thousand dollars beyond the amount of my debts, and have property in the State of Iowa liable to execution to the amount of one thousand dollars.

(Signed) SAMUEL ALLISON, J'R.

Subscribed and sworn to by Samuel Allison, j'r, before me, on this fifth day of July, A. D. 1876.

(S'g'd) J. B. BAGGS,
United States Commissioner for District of Iowa.

UNITED STATES OF AMERICA,
District of Iowa:

465 I, Riley Holdridge, being duly sworn, say that I am worth at least three thousand dollars beyond the amount of my debts, and have property in the State of Iowa liable to execution to the amount of one thousand dollars.

(Signed) RILEY HOLDRIDGE.

Subscribed and sworn to by Riley Holdridge before me this fifth day of July, A. D. 1876.

(S'g'd) J. B. BAGGS,
United States Commissioner for the District of Iowa.

The Delaware Railroad Construction Company and the Delaware County Railroad Company having claimed and prayed an appeal to the Supreme Court of the United States from the decree mentioned in the foregoing bond, the same is allowed, and said bond is by me approved on this 12th day of July, A. D. 1876.

(Signed) J. M. LOVE.

(Endorsed:) Filed July 13, 1876. E. R. Mason, clerk.

466 Afterwards, to wit, on the 2d day of August, 1876, the said defendants by their said attorney filed in said clerk's office their citation in said cause, the original of which is in the words and figures following, to wit:

467 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Lewis H. Meyer and William Dennison, trustees:

Whereas the Delaware Railroad Construction Company and the Delaware County Railroad Company have lately appealed to the Supreme Court of the United States, from a decree lately rendered in the circuit court of the United States for the district of Iowa, made in favor of you, the said Lewis H. Meyer and William Dennison, trustees, in the suit in said circuit court entitled Moses De Witt Loomis, Lewis H. Meyer, and William Dennison vs. The Davenport & S't Paul Railroad Company et al., and have given the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises, and
468 show cause, if any there be, why said decree rendered in said suit in your favor on or about the eighth (8th) day of June, A. D. 1876, should not be corrected and reversed, and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the city of Keokuk, in the district of Iowa, in the eighth circuit, the 12th day of July, A. D. (1876) one thousand eight hundred and seventy-six.

J. M. LOVE,
Judge.

We hereby admit the receipt of a copy of the above citation, and that due service of said citation was made upon us at the city of Davenport, in the State of Iowa, on this 28th day of July, A. D. 1876.

GRANT & SMITH,
Solicitors & Counselors for Lewis H. Meyer & William Dennison, trustees, and plaintiffs in the suit named in said citation.

(Indorsed:) 552. Eq. Moses De Witt Loomis et al. vs. Davenport & S't Paul R'y Co. et al. Citation. Filed, Aug. 2, 1876. E. R. Mason, clerk.

469 In the circuit court of the United States for the district of Iowa.

I, E. R. Mason, clerk of the said court for said district, do hereby certify that the foregoing transcript contains full, true, and complete copies of all the pleadings, proceedings, record entries, depositions, documentary evidence, final decree, and appeal bond relating to the controversy between the trustees of the mortgage set out in the petition and the claims of the Delaware R. R. Construction Company and Delaware County R. R. Company, in a certain cause in said court wherein Moses De Witt Loomis, et al. are plaintiffs, and the Davenport & S't Paul R. R. Co. et al. are defendants, as full, true, and complete as the originals of the same now remain on file and of record in my office. I further certify that the original citation in said cause is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at my office, in Des Moines, in said district, this 2 day of October, A. D. 1876.

[SEAL.]

ED. R. MASON,
Clerk U. S. C. C. District of Iowa.

469½ (Indorsement on cover:) No. 209. The Delaware Railroad Construction Company and The Delaware County Railroad Company, appellants, vs. Lewis H. Meyer and William Dennison, trustees. Iowa C. C. U. S. Filed 10th October, 1876.

470 *Additional transcript.*

United States circuit court, district of Iowa.

MOSES DE WITT LOOMIS *vs.* THE DAVENPORT & S'T PAUL RAILROAD CO. et al.	No. 552. Eq.

470½ *Stipulation.*

In the Supreme Court of the United States.

THE DELAWARE RAILROAD CONSTRUCTION Company & the Delaware County Railroad Company, appellants, *vs.* LEWIS H. MEYER & WILLIAM DENNISON, trustees, appellees.	No. 774.

It is hereby stipulated by and between the appellants and appellees in the above-entitled suit, No. 774 in the Supreme Court of the United

States and which was No. 552 in the circuit court of the United States for the district of Iowa, that the depositions of Hiram Price and of the several witnesses whose testimony was taken before J. B. Boggs, U. S. commissioner, and filed in said suit in said circuit court (No. 552), and the record from the circuit court of Delaware County, Iowa, filed in suit No. 635, in said U. S. circuit court (being that entitled "The Delaware Railroad Construction Company vs. The Davenport & S't Paul Railroad Company et al."), constitute and were evidence in said suit No. 774 (being No. 552 in said circuit court) and said depositions and record
471 were received on the trial thereof.

It is further stipulated that the clerk of said U. S. circuit court shall make out a transcript of said record and depositions, annex thereto his proper certificate under seal and this stipulation, and forward the same to the clerk of said Supreme Court, who shall file the same in said suit No. 774, and the same shall constitute a part of the record in that case in the same manner as if it had been sent up with the record now on file therein or as if sent up under a writ of certiorari issued therefor by said Supreme Court, and shall be printed with the record filed in that court.

GEO. G. WRIGHT,
For App'nt.
JAMES GRANT,
For Trustees & Appellees.

472 I, Edward R. Mason, clerk of the circuit court of the United States in and for the district of Iowa, in accordance with the foregoing stipulation of parties, do hereby certify and return that hereto attached are full, true, and complete copies of the transcript of record in a certain cause wherein the Delaware Railroad Construction Company is plaintiff and the Davenport & S't Paul Railroad Company et al. are defendants (being a copy of the record from the circuit court of Delaware County, Iowa, filed in said U. S. circuit court in a case numbered 635), and of the depositions of Hiram Price and the other witnesses described in said annexed stipulation in a certain cause numbered 552, wherein Moses De Witt Loomis and others are plaintiffs, including Lewis H. Meyer and William Dennison, trustees, as full, true, and complete as the originals of the same now remain on file and of record in my office.

And I certify that the printed figures at the top of each page
473 of the annexed copy of said transcript of the record from the Delaware circuit court agree with the numbers on said original transcript marking the pages thereof, and each page of the annexed copy of said transcript is a true copy of the original above mentioned.

I further certify that this additional transcript and the transcript in the same case heretofore certified and sent by me to the clerk of the Supreme Court of the United States include copies of all the evidence on file or used upon the trial of the issues in said suit in the circuit court of the United States between Lewis H. Meyer and William Dennison, trustees and plaintiffs, and the Delaware Railroad Construction Company and the Delaware County Railroad Company, defendants.

Witness my hand and the seal of said court, at Des Moines, in said district, this the 25th day Sept., A. D. 1877.

[SEAL.] E. R. MASON, *Clerk.*

474 STATE OF IOWA,
Delaware County, ss:

Pleas before the circuit court of the State of Iowa for the county of

Delaware, at a term begun and holden in the county of Delaware on the fourth Monday in January, 1874, on the third Monday in May, 1874, on the fourth Monday in January, 1875, and on the third Monday in May, 1875, before the Hon. Sylvester Bagg, sole judge of the circuit court in and for the ninth judicial district for the State of Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company *against* THE DAVENPORT & S'T PAUL RAILROAD COMPANY, John Edgar Thomson, and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard.	1141.	Equity.

Be it remembered that heretofore, to wit, on the 15th day of January, A. D. 1874, a petition was filed in the office of the clerk of the circuit court in and for the county of Delaware and State of Iowa, in words and figures following, to wit:

475 *Petition in equity.*

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company *vs.* THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thomson and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard.

Par. 1. The Delaware Railroad Construction Company, the plaintiff in this suit, is a corporation duly organized under the laws of the State of Iowa, and alleges that heretofore, to wit, on or about the sixth day of August, A. D. 1870, said plaintiff entered into a written contract, a copy of which is hereto annexed and made a part hereof, whereby said plaintiff agreed with the defendant, the Davenport & S't Paul Railroad Company, a corporation duly organized under the laws of the State of Iowa, for the performance of certain work and the furnishing of certain materials for said railroad, which will more particularly appear from a copy of said contract contained in the statement for a mechanic's lien filed by said plaintiff in the office of the clerk of the district court of Delaware County, Iowa; and a copy of said statement, including a copy of said contract, is hereto annexed and made a part of this petition. By said contract said plaintiff agreed to grade said road from the south line to the north line of Delaware County, to do the grubbing, side-chopping, and clearing mentioned in said contract, to excavate the earth, solid and loose rock required for said portion of said road, and to furnish the timber and plank for bridges, the piles for foundations and bridges, and ties for said portion of said road.

476 [3] Par 2. Plaintiff alleges that under the direction and supervision of the engineer of said railroad company, said plaintiff performed the work required in said contract, and in every respect complied with the terms and conditions thereof.

Par. 3. That plaintiff, under said contract and the direction and supervision of said engineer, on the 29th day of September, A. D. 1870, commenced said work, and from that date to Nov. 15, 1870, excavated eighteen hundred and five yards of earth, and furnished and put twenty-two hundred and fifty-two feet of plank into culverts; that the same was estimated by said engineer Nov. 15, 1870, as will more fully appear from his Estimate No. 1, a copy of which is hereto annexed and made a part hereof.

Par. 4. That plaintiff, in like manner, from Nov. 15, to Dec. 15, 1870, excavated twenty thousand and ninety-one yards of earth, one hundred and twenty-three yards of solid rock, and nine hundred yards of loose rock, furnished and put into culverts twelve hundred and sixty-two feet of lumber, and grubbed and cleared four and fifty-eight hundredths acres of land as will also appear from the estimate of said engineer, made Dec. 15, 1870, a copy of which is marked "Estimate No. 2," is hereto annexed and made a part of this petition.

Par. 5. That in like manner said plaintiff, previous to January 10th, 1871, and from December 15, 1870, excavated eighteen thousand and one hundred and four yards of earth, four hundred and twelve yards of solid rock, and two hundred thirty-nine yards of loose rock, furnished and put into culverts one thousand five hundred and thirty-six feet of lumber, and grubbed and cleared thirty-four hundredths of an acre of land, and furnished one thousand and four ties, as will appear from the estimate of said engineer, made January 20, 1871, of which a copy marked "Estimate No. 3," is annexed hereto and made a part hereof.

Par. 6. That in like manner from January 10th, 1871, to Feb-
477 [4] ruary 1st, 1871, plaintiff excavated twenty-four hundred and forty-five yards of earth, seven hundred and thirty-eight yards of solid rock, and seven hundred and seventy yards of loose rock, furnished and put into culverts four hundred and sixty-four feet of lumber, grubbed and cleared one acre of land, and furnished twenty-three hundred and seventy-eight ties, all of which were included in the estimate of said engineer made Feb. 1st, 1871, a copy of which is hereto annexed, marked "No. 4," and made a part hereof.

Par. 7. That in like manner, from Feb. 1st to March 1st, 1871, plaintiff furnished thirty-seven hundred and twenty-eight ties, as shown by the Estimate No. 5, a copy of which is hereto annexed, and made a part of this petition.

Par. 8. That in like manner, from March 1st, 1871, to April 1, 1871, plaintiff excavated ten thousand five hundred and fifty yards of earth, twelve hundred and seventy-four yards of solid rock, and three thousand eight hundred and fifty-nine yards of loose rock, furnished eleven thousand six hundred and eighty-six ties, and grubbed and cleared one acre of land; all of which appears from the estimate of said engineer, marked "No. 6," a copy of which is hereto annexed and made a part hereof.

Par. 9. That in like manner, from April 1st to May 1st, A. D. 1871, plaintiff excavated twenty-four thousand six hundred and eighty-four yards of earth, thirteen hundred and ninety-two yards of solid rock, and nineteen hundred and six yards of loose rock, furnished and put in twenty-seven hundred feet of lumber for culverts, furnished and delivered sixteen hundred and five ties, two thousand and ninety-five feet of piling, and grubbed and cleared five and thirty-five hundredths acres of land, being the estimate of said engineer, of which a copy, marked "No. 7," is hereto annexed and made a part hereof.

Par. 10. That in like manner, from May 1st to June 1st, 1871, plaintiff excavated thirty-three thousand and fifty-three yards of earth,
478 [5] eight hundred and fifty-three yards of solid rock, and two thousand three hundred and ninety-eight yards of loose rock, furnished and put in thirty-six hundred and fifty-six feet of lumber, furnished and delivered fifteen hundred and forty-two ties, two thousand and ninety-six feet of piles, and grubbed and cleared one and $\frac{5}{10}$ acres of land, which is shown by Estimate No. 8 of said engineer, of which a copy is hereto annexed and made a part of this petition.

Par. 11. That in like manner, from June 1st to July 10, 1871, plaintiff excavated twenty-eight thousand three hundred and twenty-five yards of earth, eleven hundred and forty-nine yards of solid rock, and thirteen hundred and forty-seven yards of loose rock, furnished and put into culverts three thousand three hundred and forty-one feet of lumber, furnished and delivered two thousand and sixty-six ties, nine hundred and fourteen feet of piling, and grubbed and cleared four acres of land; all of which is shown by Estimate No. 9, a copy of which is hereto annexed and made a part of this petition.

Par. 12. That in like manner, from July 10 to Aug. 7, 1871, plaintiff excavated ten thousand eight hundred and seventy-nine yards of earth, two hundred and sixty-four yards of solid rock, and fifty yards of loose rock, furnished and put into culverts twenty-four hundred and thirty-six feet of lumber, furnished and delivered fifty ties, and grubbed and cleared six and ninety-seven hundredths acres of land; all of which was duly estimated by said engineer, a copy of whose estimate, marked "No. 10," is hereto annexed and made a part hereof.

Par. 13. That in like manner, from August 7th to September 9th, 1871, plaintiff excavated twenty-eight thousand nine hundred and fifty-seven yards of earth, three hundred and fifty-one yards of solid rock, and six hundred and eighty-five yards of loose rock, furnished twenty-three hundred and ninety-two feet of lumber, putting it into cul-
479 [6] verts, furnished one hundred and fifty-seven ties, grubbed and cleared one and one-half acres of land, furnished and drove seven hundred and eighty feet of piling not over twenty feet, and five hundred feet of piling over twenty feet long, and furnished and put into bridges twenty-four thousand five hundred and seventy-two feet of lumber; all estimated by said engineer, as will appear from his Estimate No. 11, hereto annexed and made a part hereof.

Par. 14. That in like manner, from September 9th to October 4th, 1871, plaintiff excavated twenty-six thousand five hundred and fifty-four yards of earth, seven hundred and seventy-five yards of solid rock, five hundred and nine yards of loose rock, furnished and put into bridges and culverts twenty-two thousand two hundred and ninety-six feet of lumber, furnished and delivered one hundred and three ties, grubbed and cleared two and forty-five hundredths acres of land, put in fifteen yards of riprap, at the rate of fifty cents per yard, and the same was reasonably worth $7.50, and furnished and drove three hundred feet of piling, each pile not over twenty feet, and thirty-five hundred feet of piling, each pile being over twenty feet long; all of which is included in the estimate of said engineer, marked "No. 12," of which a copy is hereto annexed and made a part of this petition.

Par. 15. That in like manner, from October 4th to November 4th, 1871, plaintiff excavated eighteen thousand seven hundred and thirty-three yards of earth, five hundred and sixty-three yards of solid rock, and two hundred and twenty-nine yards of loose rock, furnished and put into culverts seventeen hundred and eighty feet of lumber, grubbed

and cleared one and one-fourth acres of land, furnished and drove eighty feet of piling, each pile not over twenty feet long, and thirty-two hundred and thirty-two feet of piling, each pile being over twenty feet long, and furnished and put into bridges seventy-four thousand five hundred and eighty-three feet of lumber; all of which, estimated by said engineer, is shown by his Estimate No. 13, of which a copy is hereto annexed and made a part of this petition.

480 [7] Par. 16. That in like manner, from Nov. 4th to December 15, 1871, plaintiff excavated eleven thousand seven hundred and eighty seven yards of earth, fifty yards of solid rock, and eighty-eight yards of loose rock, furnished and put into culverts fifteen hundred feet of lumber, grubbed and cleared one and seventy-five hundredths acres of land, furnished and drove nine hundred and thirty feet of piles each over twenty feet long, and furnished for bridges sixteen thousand two hundred and eighty-seven feet of lumber, all estimated by said engineer, Dec. 15, 1871, as will appear from his estimate No. 14, of which a copy is hereto annexed and made a part of this petition.

Par. 17. That in like manner, from the 15th day of December, 1871, to April 1, 1872, plaintiff excavated six thousand and eleven yards of earth, two hundred and ninety yards of solid rock, and two hundred and fifty yards of loose rock, furnished and delivered eighty thousand feet of bridging, twelve thousand three hundred and fifty-nine ties, sixteen hundred and thirty feet of piling, and furnished and drove twenty-one hundred feet of piling, each pile being over twenty feet in length, all estimated by said engineer in his estimate No. 15, of which a copy is hereto annexed and made a part of this petition.

Par. 18. That in like manner plaintiff, from April 1st, 1872, to May 1st, 1872, plaintiff excavated twenty-five thousand four hundred and fifty-seven yards of earth, seven hundred yards of solid rock, and twenty-eight hundred yards of loose rock, furnished and put into culverts twenty-six hundred and twenty-four feet of lumber, furnished and drove seven hundred feet of piling, furnished and delivered three thousand one hundred and thirty-eight ties, and grubbed and cleared four acres of land, all of which was duly estimated May 1st, 1872, as will appear from estimate No. 16, of which a copy is hereto annexed and made a part of this petition.

481 [8] Par. 19. That in like manner, during the month of May, 1872, plaintiff excavated eighty-two thousand two hundred and twenty-nine yards of earth, nine hundred and eighty-three yards of solid rock, and twenty-one hundred and ninety-three yards of loose rock, furnished and put into culverts eighty-seven hundred and eighty feet of lumber, and furnished and delivered six thousand three hundred and twenty-eight ties, all of which were estimated by said engineer, in estimate No. 17, of which a copy is hereto annexed and made a part of this petition.

Par. 20. That in like manner, from the month of May to July 1, 1872, plaintiff excavated thirty-four thousand one hundred and forty-three yards of earth, seven hundred and fifty-eight yards of solid rock, and eight hundred and seventy-eight yards of loose rock, furnished fifty-nine hundred and thirty-nine ties, furnished and drove 1,260 feet of piling, each pile being not over twenty feet, thirteen hundred and seventy-eight feet of piling, each pile being over twenty feet in length, and furnished and put into bridges eighty-one thousand three hundred and fifty-six feet of lumber, all of which was duly estimated by said engineer, July 1, as shown by his estimate No. 18, of which a copy is hereto annexed and made a part of this petition.

Par. 21. That in like manner, after the 28th day of December, 1872, when said engineer made his final estimate, of which a copy, marked "No. 19," is hereto annexed and made a part of this petition, and after the entire line had been completed and accepted by said railroad company, other work was done by plaintiff, and other materials furnished, for said railroad company, at its special instance and request, to wit: fifteen thousand five hundred and fifty-one feet of lumber, reasonably worth the sum of $15.50 per thousand, said lumber being required and ordered by said railroad company and furnished by plaintiff, through Boon & Martin, subcontractors, having a contract with the plaintiff to furnish the same, and the same was allowed, estimated and approved by said engineer, as shown by supplimental estimate,
482 [9] marked "No. 20," a copy of which is hereunto annexed and made a part hereof; also, one hundred and fifty-two ties, reasonably worth fifty-five cents each, and two hundred and thirty-five feet of lumber put into culverts, reasonably worth the sum of $35 per thousand, and of earth plaintiff excavated one thousand and eighty yards, reasonably worth the sum of twenty cents per yard, which was also allowed, estimated and approved by said engineer, as appears by a supplimental estimate, marked "No. 21," of which a copy is hereto annexed and made a part of this petition.

Par. 22. That in like manner, previous to the 28th day of December, 1872, in addition to the work and materials mentioned in all of said estimates, except that marked "No. 19," called the final estimate, plaintiff excavated eighty-six thousand and fifty-one yards of earth, seventeen hundred and fifty yards of solid rock, and thirty-two hundred and nine yards of loose rock, furnished and put into bridges and culverts, one hundred and forty-two thousand three hundred and ninety-eight feet of lumber, furnished eleven thousand three hundred and seventy-eight ties and seventy yards of rip-rap work, said seventy yards being reasonably worth $80.50, and grubbed and cleared nine and ninety-four one-hundredths acres of land, all of which was ordered, allowed, and estimated by said engineer, being included in estimate No. 19, of which a copy is hereunto annexed and made a part of this petition, being called by said engineer, final estimate.

Par. 23. And plaintiff says that a disagreement arose between the plaintiff and defendant in relation to the construction of said contract which was arranged and settled by a subsequent agreement to strike out the following words, above the signature of H. Price, to wit: "All the money for the work hereinbefore specified, to be paid by the citizens of Delaware County." Said agreement to strike out being evidenced by the resolutions and proceedings of the board of directors of
483 [10] said railroad company, of which a copy is hereunto annexed and made a part of this petition, and by the proceedings and resolutions of the board of directors of plaintiff, a copy of which is hereunto annexed marked "C," and made a part of this petition.

Par. 24. And plaintiff says that from the commencement of said work to the present time, the entire amount received upon said contract, in payment thereof, is only the sum of one hundred and thirty-nine thousand one hundred and eighty-nine dollars and forty-six cents; that said amount is comprised in the following payments made at the times below stated, and applied as below stated, to wit: the following amounts were received at the times stated opposite the various sums and applied upon said contract in payment of the amount due as eighty per cent. of estimate No. 1, of said engineer:

Amount received Nov. 21, 1870	$919 88
Amount received Nov. 24, 1870	50 00
Amount received Jan. 6, 1871	59 41

The following sums received on or about the dates opposite the amounts were applied in payment of the amount due as eighty per cent. of estimate No. 2, of said engineer:

Amount received Dec. 19, 1870	$25 00
Amount received Dec. 21, 1870	700 00
Amount received Dec. 23, 1870	520 65
Amount received Dec. 24, 1870	446 01
Amount received Dec. 28, 1870	$820 00
Amount received Dec. 29, 1870	1,186 04
Amount received Dec. 30, 1870	55 00
Amount received Dec. 31, 1870	110 00
Amount received Jan. 6, 1871	33 39

The following sums received on or about the dates set opposite thereto were applied in payment of the amount due as 80 per cent. of estimate No. 3, of said engineer:

Am. received Jan. 17, 1871	$160 21
Am. received Jan. 19, 1871	136 67
Am. received Jan. 20, 1871	224 82
484 [11] Am. received Jan. 21, 1871	$ 97 92
Am. received Jan. 23, 1871	590 34
Am. received Jan. 28, 1871	320 77
Am. received Feb. 15, 1871	243 62
Am. received Feb. 16, 1871	13 53
Am. received Feb. 24, 1871	420 16

The following sums received on or about the dates set opposite thereto were applied in payment of the amount due as 80 per cent. of estimate No. 4 of said engineer:

Am. received Feb. 4, 1871	$1,355 20
Am. received Feb. 9, 1871	277 71
Am. received Feb. 11, 1871	443 49
Am. received Feb. 14, 1871	38 80
Am. received Feb. 15, 1871	237 73

The following sums received on or about the dates set opposite thereto were applied in payment of the amount due as 80 per cent. of the estimate of said engineer marked "No. 5":

Am. received March 8, 1871	$240 00
Am. received March 10, 1871	70 00
Am. received March 14, 1871	78 75
Am. received March 15, 1871	100 00
Am. received March 24, 1871	364 83
Am. received March 25, 1871	30 00
Am. received March 27, 1871	65 65

The following sums received on or about the dates set opposite thereto were applied in payment of the amount due as 80 per cent. of estimate of said engineer, marked "No. 6":

Am. received April 6, 1871	$151 14

Am. received April 8, 1871	818 00
Am. received April 11, 1871	301 52
Am. received April 15, 1871	100 00
Am. received April 18, 1871	20 00
Am. received April 19, 1871	553 16
485 [12] Am. received April 20, 1871	25 00
Am. received April 22, 1871	1,491 58
Am. received April 25, 1871	826 52
Am. received April 26, 1871	184 80
Am. received April 29, 1871	167 09

The following sums received on or about the dates set opposite thereto were applied in payment of the amount due as 80 per cent. of estimate of said engineer, marked "No. 7":

Am. received May 19, 1871	$256 13
Am. received May 20, 1871	68 70
Am. received May 22, 1871	555 22
Am. received May 25, 1871	299 68
Am. received May 29, 1871	31 55
Am. received May 31, 1871	49 95

The following sums received on or about the dates set opposite thereto were applied in payment of the amount due as 80 per cent. of estimate of said engineer, marked "No. 8":

Am. received June 2, 1871	$490 30
Am. received June 7, 1871	632 45
Am. received June 10, 1871	1,275 47
Am. received June 24, 1871	333 62
Am. received June 29, 1871	524 55
Am. received July 1, 1871	1,884 31
Am. received July 4, 1871	259 12
Am. received July 5, 1871	2,152 17

The following sums received on or about the dates set opposite thereto were applied in payment of the amount due as 80 per cent. of the estimate of said engineer, marked "No. 9":

Am. received July 10, 1871	$290 96
Am. received July 15, 1871	411 79
Am. received July 19, 1871	294 67
Am. received July 21, 1871	582 33
Am. received July 26, 1871	431 97
486 [13] Am. received July 28, 1871	449 15
Am. received July 29, 1871	299 24
Am. received Aug. 5, 1871	100 00
Am. received Aug. 22, 1871	123 68
Am. received Aug. 24, 1871	72 00
Am. received Aug. 27, 1871	57 15
Am. received Sept. 5, 1871	50 00
Am. received Sept. 7, 1871	369 56

The following sums received on or about the dates set opposite thereto were applied in payment of the amount due as 80 per cent. of estimate of said engineer, marked "No. 10":

Am. received Aug. 12, 1871	$125 00
Am. received Aug. 15, 1871	22 50
Am. received Aug. 17, 1871	165 85
Am. received Aug. 21, 1871	1,535 91
Am. received Aug. 22, 1871	291 26

The following sums received on or about the dates set opposite thereto were applied in payment of the amount due as 80 per cent. of estimate of said engineer, marked "No. 11":

Amount received Sept. 9, 1871	$175 00
Amount received Sept. 19, 1871	578 55
Amount received Sept. 26, 1871	56 70
Amount received Sept. 27, 1871	410 73
Amount received Sept. 28, 1871	203 30
Amount received Sept. 30, 1871	1,006 29

The following sums received on or about the dates set opposite thereto were applied in payment of the amount due as 80 per cent. of estimate of said engineer, marked "No. 12":

Am. received Oct. 13, 1871	$166 99
Am. received Oct. 20, 1871	342 55
Am. received Oct. 31, 1871	1,073 61
Am. received Nov. 1, 1871	946 81
Am. received Nov. 2, 1871	421 12
487 [14] Am. received Dec. 21, 1871	512 70
Am. received Dec. 22, 1871	665 21
Am. received Dec. 25, 1871	110 25
Am. received Dec. 26, 1871	180 35
Am. received Dec. 29, 1871	1,626 00
Am. received June 1, 1872	100 00
Am. received June 3, 1872	100 00
Am. received June 8, 1872	51 30
Am. received June 9, 1872	130 95
Am. received June 12, 1872	288 50
Am. received June 24, 1872	17 00

The following sums received on or about the dates set opposite thereto were applied in payment of the amount due as 80 per cent. of estimate of said engineer, marked "No. 13":

Am. received Nov. 7, 1871	$291 10
Am. received Nov. 8, 1871	218 03
Am. received Nov. 10, 1871	3,204 12
Am. received Nov. 15, 1871	336 05
Am. received Nov. 16, 1871	114 18
Am. received Nov. 21, 1871	540 79
Am. received Nov. 23, 1871	300 00
Am. received Nov. 24, 1871	22 99
Am. received Nov. 25, 1871	275 55
Am. received Dec. 7, 1871	1,037 56
Am. received Dec. 8, 1871	287 20
Am. received Dec. 9, 1871	251 88
Am. received Dec. 10, 1871	115 33
Am. received Dec. 11, 1871	139 19

Am. received Dec. 21, 1871 ..... 188 30

The following sums received on or about the date set opposite thereto was applied in payment of the amount due as 80 per cent. of estimate of said engineer, marked "No. 14":

Am. received Dec. 21, 1871 ..... $2,936 56

488 [15] The following sums, received on or about the dates set opposite thereto, were applied in payment of the amount due as 80 per cent. of estimate of said engineer, marked "No. 15":

Am. received April 4, 1872	$50 00
Am. received April 8, 1872	730 10
Am. received April 18, 1872	55 00
Am. received April 21, 1872	172 25
Am. received April 30, 1872	244 70
Am. received May 27, 1872	614 31
Am. received May 29, 1872	66 60
Am. received May 30, 1872	43 41
Am. received June 1, 1872	60 00
Am. received June 13, 1872	850 00
Am. received Dec. 14, 1872	1,426 12
Am. received Dec. 16, 1872	31 05
Am. received Dec. 17, 1872	543 21
Am. received Dec. 18, 1872	270 38
Am. received Dec. 19, 1872	45 00
Am. received Dec. 21, 1872	109 95

The following sums, received on or about the dates set opposite thereto were applied in payment of the amount due as 80 per cent. of estimate of said engineer, marked "No. 16":

Am. received May 3, 1872	$1,866 90
Am. received May 4, 1872	53 00
Am. received May 7, 1872	13 95
Am. received May 8, 1872	591 85
Am. received May 9, 1872	72 35
Am. received May 13, 1872	128 30
Am. received May 18, 1872	4,073 45
Am. received May 20, 1872	316 81
Am. received May 21, 1872	400 00
Am. received May 23, 1872	273 15
Am. received May 27, 1872	196 28

489 [16] The following sums, received on or about the dates set opposite thereto, were applied in payment of the amount due as 80 per cent. of estimate of said engineer, marked "No. 17":

Am. received June 20, 1872	$1,684 90
Am. received June 22, 1872	90 50
Am. received June 29, 1872	250 00
Am. received July 20, 1872	6,860 05
Am. received July 21, 1872	409 44
Am. received July 22, 1872	697 63
Am. received " 23, 1872	89 92

Am. received July 26, 1872	620 53
Am. received " 29, 1872	400 00
Am. received Nov. 25, 1872	302 56
Am. received Nov. 26, 1872	2,262 72
Am. received Nov. 29, 1872	192 40
Am. received Dec. 3, 1872	64 41
Am. received Dec. 6, 1872	20 25
Am. received Dec. 7, 1872	1,972 42
Am. received Dec. 9, 1872	39 15
Am. received Dec. 11, 1872	806 67
Am. received Dec. 12, 1872	519 28
Am. received Dec. 14, 1872	48 42

The following sums, received on or about the dates set opposite thereto, were applied in payment of the amount due as 80 per cent. of estimate of said engineer, marked "No. 18":

Am. received July 1, 1872	1,460 80
Am. received July 2, 1872	1,043 56
Am. received July 5, 1872	2,188 19
Am. received July 6, 1872	328 10
Am. received July 12, 1872	5,272 10
Am. received July 13, 1872	75 00
Am. received July 17, 1872	120 00
Am. received July 20, 1872	2,148 70

The following sums, received on or about May 19, 1873, was
490 [17] applied in payment of the amount due on supplemental estimate marked "No. 20," and annexed to said petition, the estimate being dated May 4, 1872, to wit:

Am. received May 19, 1873	$241 64

The following amount, received May 29, 1873, was applied in payment of the amount due on supplemental estimate No. 21, made by said engineer May 29, 1873:

Am. received May 29, 1873	$307 82

The following sums received on or about the dates set opposite thereto, were applied in payment for the amount due for the work and materials, and indebtedness mentioned in estimate of said engineer marked "No. 19," dated Dec. 28, 1872, and described as final estimate for Delhi division:

Am. received Dec. 29, 1872	210 50
Am. received Dec. 30, 1872	246 60
Am. received Dec. 31, 1872	13 05
Am. received Jan. 1, 1873	626 07
Am. received Jan. 6, 1873	320 00
Am. received Jan. 11, 1873	551 88
Am. received Jan. 17, 1873	100 00
Am. received Jan. 18, 1873	943 40
Am. received Jan. 20, 1873	948 75
Am. received Feb. 6, 1873	1,384 07
Am. received Feb. 13, 1873	172 09

Am. received Feb. 14, 1873		122 20
Am. received Feb. 18, 1873		300 00
Am. received Feb. 20, 1873		237 84
Am. received Feb. 24, 1873		139 75
Am. received March 27, 1873		892 41
Am. received April 24, 1873		289 80
Am. received April 25, 1873		50 00
Am. received April 28, 1873		100 00
Am. received May 3, 1873		265 30
Am. received May 19, 1873		1,062 13
491 [18] Am. received May 20, 1873		2,227 41
Am. received May 27, 1873		914 85
Am. received May 29, 1873		241 53
Am. received May 31, 1873		255 75
Am. received June 2, 1873		200 00
Am. received June 3, 1873		39 33
Am. received June 16, 1873		500 75
Am. received June 26, 1873		908 75

The following amounts, received on or about the dates set opposite thereto, were applied in payment of last 20 per cent. of the indebtedness arising from the completion of the first five miles from the south end of the line mentioned in said contract:

Am. received Aug. 9, 1872	406 24
Am. received Aug. 14, 1872	39 85
Am. received Nov. 15, 1872	65 86
Am. received Nov. 25, 1872	2,677 18

The following amounts, received on or about the dates set opposite thereto, were applied in payment of the last 20 per cent. of the indebtedness arising from the completion of the second five miles from the south end of the line mentioned in said contract, said five miles beginning in South Fork Township and ending in Delhi Township:

Am. received Sept. 2, 1872	1,094 15
Am. received Sept. 3, 1872	1,370 00
Am. received Sept. 4, 1872	1,112 10
Am. received Sept. 7, 1872	2,245 90
Am. received Nov. 15, 1872	2,929 82

The following amounts, received on or about the dates set opposite thereto, were applied in payment of the last 20 per cent. of the indebtedness arising from the completion of the third five miles from the south end of the line mentioned in said contract, said five miles beginning in Delhi Township:

Am. received Sept. 11, 1872	$500 00
492 [19] Am. received Sept. 18, 1872	500 00
Am. received Sept. 30, 1872	527 45
Am. received Oct. 5, 1872	4,806 53
Am. received Oct. 7, 1872	38 25
Am. received Oct. 21, 1872	951 55
Am. received Oct. 22, 1872	463 50
Am. received Oct. 28, 1872	528 51
Am. received Nov. 11, 1872	682 63

Am. received Nov. 12, 1872	208 80
Am. received Nov. 13, 1872	275 10
Am. received Nov. 15, 1872	953 79

The following amounts, received on or about the dates set opposite thereto, were applied in payment of the last 20 per cent. of the indebtedness arising from the completion of the fourth five miles from the south end of the line mentioned in said contract, ending in Oneida Township:

Am'nt received Nov. 6, 1872	100 00
Amount received Nov. 7, 1872	400 00
Amount received Nov. 9, 1872	1,092 65
Amount received Nov. 11, 1872	4,087 00

The following amounts, received on or about the dates set opposite thereto, were applied in payment of the last 20 per cent. of the indebtedness arising from the completion of the fifth five miles from the south end of the line mentioned in said contract:

Am. received Nov. 20, 1872	$149 10
Am. received Nov. 21, 1872	4 05
Am. received Nov. 22, 1872	457 12
Am. received Nov. 23, 1872	811 16
Am. received Nov. 25, 1872	1,189 93

The foregoing amounts comprise all of the payments received upon the indebtedness to plaintiff under said contract, and all credits to which said Davenport and S't Paul Railroad Company are entitled.

Par. 25. Plaintiff alleges that the first five consecutive miles 493 [20] of work from the south line of Delaware County was completed by the plaintiff before and accepted by said Davenport and S't Paul Railroad Company on the 31st day of July, 1872; the second five miles from the south end of said line was completed before and accepted by said railroad company on the 15th day of August, 1872; the third five miles from the south end of said line was by plaintiff completed before and accepted by said railroad company on the 10th day of September, 1872; the fourth five miles from the south end of said line was completed by plaintiff before and accepted by said railroad company on the 31st day of October, 1872; the fifth five miles from the south end of said line was completed by plaintiff before and accepted by said railroad company on the 31st day of October, 1872; and plaintiff says that the work on the entire line mentioned in said contract was completed by plaintiff before and accepted by said railroad company and by said engineer on the 31st day of October, 1872.

Par. 26. Plaintiff says that said work was performed upon and said materials were furnished for a work of internal improvement, to wit, said railroad; that said work and labor was performed and said materials furnished under a contract with said Davenport and S't Paul Railroad Company upon the road-bed and bridges and culverts owned by said railroad company, including the road-bed and the land occupied by depot buildings, side tracks, and all of the land belonging to said railroad company in Delaware County, Iowa, and used in the operation of said railroad, and the same is still the property of said railroad company. That upon the 20th day of December, A. D. 1872, plaintiff filed in the office of the clerk of the district court of Delaware County, Iowa, a statement and account for a mechanic's lien, of which a copy, marked "A," is hereunto annexed and made a part of this petition, and in said statement is included a copy of the contract mentioned in the first paragraph of this petition.

494 [21] Par. 27. And plaintiff says that the defendants Lucius Howard, the Davenport Railway Construction Company (a company organized under the laws of the State of Iowa), and John Edgar Thomson, and William Dennison, trustees for certain bondholders of said Davenport and S't Paul Railroad, have liens upon said property, but the lien to which plaintiff is entitled by virtue of the premises is paramount to the respective liens of said defendants.

Par. 28. Wherefore plaintiff prays for judgment against said defendant the Davenport and S't Paul Railroad Company for the amount of fifty-five thousand dollars, besides interest and costs of suit, and for the enforcement of a mechanic's lien for that amount upon the said property, including the road-bed, track, depot grounds and buildings and all fixtures connected therewith; that said lien be declared paramount to the liens of the respective defendants, and that said defendants be foreclosed of and from all right of redemption from and after the sale thereof under execution issued upon said judgment, and that defendant have such other or *or* further relief as may be equitable.

J. M. BRAYTON,
Att'y for Plaintiff.

STATE OF IOWA, *Delaware County, ss:*

Par. 29. I, Charles F. Fleming, being duly sworn, say that I am president of the board of directors of the Delaware Railroad Construction Company, plaintiff, named in the foregoing petition; that I have heard said petition read, and that the statements therein made are true, as I verily believe.

CHARLES F. FLEMING.

Signed by Charles F. Fleming, in my presence, and by him sworn to before me, on this 15th day of January, A. D. 1874.

[SEAL.] G. B. BEVERIDGE,
Clerk Circuit Court.

495 [22] A.

Statement and account for mechanic's lien by Davenport and S't Paul Railroad against Company upon and S't Company.

The Delaware Railroad Construction Company have and claim a mechanic's lien upon all of that part of the Davenport and S't Paul Railroad included or lying within the county of Delaware and State of Iowa, including the road-bed, tracks, and all fixtures. Said mechanic's lien exists and is claimed by virtue of work done and materials furnished for said construction company by virtue of a contract and subsequent to the date of the within contract between said companies, of which the following is a copy:

DAVENPORT AND S'T PAUL RAILROAD.

This agreement, made and concluded this sixth day of August, one thousand eight hundred and seventy, between the Delaware Railroad Construction Company of the first part, and the Davenport and S't Paul Railroad Company of the second part, witnesseth:

The aforesaid party of the first part, in consideration of the prices hereinafter agreed to be paid by the party of the second part, hereby

covenants and agrees to grade and construct all of the line between the south and north line of Delaware County, of the Davenport and S't Paul Railroad, in such manner as shall conform in every respect to the annexed specifications, which shall be considered as part of this contract, and to the following conditions:

1st. The work shall be commenced within sixty days after the execution of this contract, and shall be completed on or before the day of , one thousand eight hundred and .

2d. The work shall be executed under the direction and super-
496 [23] vision of the engineer of the company for the time being, by whose measurements and calculations the amounts of the several kinds of work performed under this contract shall be determined; and who shall have full power to reject or condemn all work or materials which, in his opinion, do not fully conform in the spirit of this agreement, and shall decide all questions which may arise between the parties relative to the execution thereof, and his decision shall be final and binding upon both parties.

3d. It is further agreed that this contract, in every respect, shall be prosecuted in such order and at such places and parts of the work and at such times and seasons as the said engineer may direct; also in reference to a proper and economical use of materials for the work; and any unnecessary waste of materials shall be made good by the said contractor.

4th. And the said contractors further promise and agree that they will not of themselves or by their agent or agents give or sell any ardent spirits to their workmen or any other person on or near the line of said railroad, or allow any to be brought on the work by the laborers or any other person, and will do all in their power to discountenance its use in the vicinity of the work by persons in their employ.

5th.

6th. Any omission to disapprove of defective work, at the time of any estimate, shall not be construed as an acceptance of said work.

7th. If the party of the first part refuses or unreasonably neglects to remedy any imperfection which may be pointed out by the engineer or by the party of the second part, or fails to prosecute the work with the required despatch, or in any manner violates the conditions of this contract, so that, in the judgment of the engineer, or in the
497 [24] judgment of the party of the second part, there may be just grounds of apprehension that the work will not be completed in the manner or within the time herein specified, then the engineer or said party of the second part may serve a written notice upon the said party of the first part, specifying the manner and time in which said party shall cause such grounds of apprehension to be removed, and if, at the expiration of said time, said grounds of apprehension are not removed, then full power and authority is hereby vested in said engineer or in said party of the second part to declare this contract forfeited, and such declaration being given in writing by the engineer or by said party of the second part to the party of the first part, or if said notice shall be given by the engineers then to the parties hereto, this contract shall cease immediately and the said party of the second part shall be entitled to the reserved percentage as a consideration for the damages that may be sustained by reason of the forfeiture of this contract. All fences must be kept up so as not to allow cattle to escape or crops to be destroyed.

In consideration of the faithful performance of all the conditions of

this contract, the party of the second part agrees to pay said party of the first part, on the estimates of the engineer, as follows:

For grubbing, clearing, and side chopping the section as specified, per acre, ten dollars.

For earth excavation, at the rate of 20 cents per cubic yard; for excavation of rock, including stone measuring over one cubic yard, at the rate of one dollar for solid rock per cubic yard; loose rock, seventy cents per cubic yard.

For timber and plank in bridges and wood culverts, at the rate of thirty-five dollars per M f't, board measure.

For piles in foundations and for piles in bridges, at the rate of fifty cents per foot for all piles twenty feet long or less, and sixty
498 [25] cents per foot for all piles over twenty feet, per lineal foot, to be one foot in diameter at center, and may be black walnut, red elm, white oak, or burr oak.

For wrought-iron in bridges, at the rate of—

For cast-iron in bridges, at the rate of—

Iron to be furnished by the party of second part, —— cents per pound.

For ties, fifty-five cents each, to be eight feet long and six inches thick, one-fourth to have at least nine, one-fourth eight, one-fourth seven, and one-fourth six inches face, and may be white oak, burr oak, black oak, red elm, black walnut, white walnut, but not more than one-fourth black oak, and to be delivered on the line at most convenient points, in view of hauling, and to be designated by engineer. The prices above specified are to be in full compensation for all materials and labor required to put the same into the work herein contracted for, and complete the same in all respects as provided in this contract. In order to enable the contractor to prosecute the work advantageously the said engineer shall make an estimate from time to time, not oftener than once per month, as the work progresses, both on work done and materials delivered on the line of said railroad. The said party of the second will pay in current money eighty per cent. of the amount of said estimate, twenty (20) per cent. of the estimates as they are made to the party of the first part may be retained by the party of the second part as damages in case of a forfeiture of this contract; which said (20) twenty per cent., together with the whole amount of this contract, according to the terms thereof, and on the estimate of the engineer, shall be paid to the party of the first part within thirty days after all the work herein contracted for is completed and accepted by the engineer. "Qualified below."

The above payments on estimates shall be made every thirty (30) days, at the office of the president of said Davenport and S't
499 [26] Paul Railroad Company, in Davenport. The Davenport and S't Paul Railroad Company may stop all work at any time without payment of damages by giving thirty days' notice.

Whenever five consecutive miles of work from the south line of Delaware County are completed by the party of the first part, and accepted by the party of the second part, the party of the second part shall pay the full amount of the contract price for said work on said five miles, within thirty days after said work is accepted, without the deduction of said twenty per cent., and for every additional five consecutive miles of the south end of the work completed by said first party, said second

party shall pay in like manner, within thirty days after the same has been accepted, and so on through the county from south to north.

Signed this 6th day of August, A. D. 1870.

R. EDDY, *Pres.*,
J. M. BRAYTON, *Sec'ty*,
F. B. DOOLITTLE, *Treas.*,
Board of Directors of the Delaware Railroad Construction Company.

All the money for the work hereinbefore specified, to be paid by the citizens of Delaware County.

H. PRICE,
Prest. Dav. and S't Paul R. R. Co.

The following is a just and true account of the labor done and material furnished by virtue of said contract, and of all credits to this date, and of the amount due from said railroad company to said construction company, including interest:

Copy of a/c.

The Davenport and S't Paul Railroad Company to the Delaware Railroad Construction Co. *Dr.*

To excavation of 486,703 y'ds of earth, at 20c. per yard	$97,384 60
500 [27] To excavation of 12,425 y'ds of solid rock, $1.00 per y'd	12,425 00
To excavation of 22,310 y'ds of loose rock, 70c. y'd	15,617 00
To 402,080 f't timber for bridges and culverts, at $35.00 per M	16,173 01
To 15,351 f't timber not used, at $15.00 per M	230 27
To 63,398 ties, at 55c. each	34,868 90
To grubbing and clearing 44 66-100 acres, at $10.00 per acre	446 60
To 97 yards riprap, at $1.25 per yard	121 25
To 3,264 f't piling, 20 f't and under, at 50c. per foot	1,632 00
To 11,680 f't piling, 20 f't and over, at 60c. per foot	7,008 00
To interest to December 19, 1872	5,000 00
	$190,862 63

Davenport and S't Paul Railroad Company, Cr.

By amount paid to date	$119,697 05
Bal. due D. R. Construction Company	$71,165 58

And for which it has and claims a mechanic's lien upon the Davenport and S't Paul Railroad situated within Delaware County, Iowa.

R. EDDY, *Pres.*,
A. E. MARTIN, *Sec'ty*,
Treas.,
Board of directors of D. R. Construction Company.

STATE OF IOWA,
Delaware County, ss:

I, Ancil E. Martin, being duly sworn, say that I am the secretary o

the Delaware Railroad Construction Company; that I have read the foregoing statement and account, and that the same is true as I verily believe, and that the said account is justly due, and s'd balance of $71,165.58 is owing by said Davenport and S't Paul Railroad
501 [28] Company to said Delaware Railroad Construction Company as I verily believe.

ANCEL E. MARTIN.

Subscribed to by Ancel E. Martin in my presence, and by him sworn to before me on this 20th day of December, A. D. 1872.

A. J. BROWN,
Clerk District Court, Del. Co., Iowa.

Filed Dec. 20, 1872.

A. J. BROWN, *Clerk.*

Copy of resolution and proceedings of the board of directors of the Delaware Railroad Construction Company.

B.

DELHI, *July 1st*, 1872.

At a meeting of the board of directors of the Delaware Railroad Construction Company, held at the office of said company in Delhi, Iowa, July 1st, 1872, the following certified copy of a resolution passed June 5, 1872, by the executive committee of the board of directors of the Davenport and S't Paul Railroad Company was read, spread upon the records, and placed on file, to wit:

At a meeting of the executive committee of the board of directors of the Davenport and S't Paul R. R. Com., held at the office of the company, No. 47 Brady st., Davenport, Iowa, June 5, 1872, the following resolution was unanimously adopted:

Resolved, That this company hereby consents and does agree to abrogate the following clause in the contract made with the Delaware Railroad Construction Company, signed August 6, 1870, to wit, the words, "All the money for the work hereinbefore specified to be paid by the citizens of Delaware County," on the condition and agreement by the said company by a resolution by its board of directors to abate of its claim under said contract the sum of two thousand dollars on final settlement.

502 [29] I hereby certify that the above is a true and exact copy of a resolution adopted by the executive committee of the Dav. and S't P. R. R. Co., at *at* a meeting held by them on the 5th day of June, 1872. In witness whereof I have hereunto set my hand and affixed the corporation seal of said company this 6th day of June, A. D. 1872.

[SEAL.]

W. H. PRICE,
Sect. D. S't P. R. R. Co.

When the following resolution was unanimously adopted:

Resolved, That the terms of a resolution passed by the executive committee of the board of directors of D. and S't P. Rail. R. Co., a copy of which has just been read, spread upon the records, and placed on file, be and are hereby accepted, and that we hereby agree to abate of our claim two thousand dollars on final settlement as conditioned in said resolution.

Adjourned.

A. E. MARTIN,
Sec't'y Del. R. R. Con. Co.

Copy of a resolution and proceedings of the board of directors of the Davenport and S't Paul Railroad Company.

C.

At a meeting of the executive committee of the board of directors of the Davenport and S't Paul Railroad Company, held at the office of the company, No. 47 Brady st., Davenport, Iowa, June 5, 1872, the following resolution was unanimously adopted:

Resolved, That this company hereby consents, and does hereby agree, to abrogate the following clause in the contract made with the Delaware Railroad Construction Company, signed August 6th, 1870, to wit, the words, "All the money for the work hereinbefore specified to be paid by the citizens of Delaware County," on the condition and
503 [30] agreement by the said company, by a resolution of its board of directors to abate of its claims under said contract the sum of two thousand dollars on final settlement.

I hereby certify that the above is a true and exact copy of a resolution adopted by the executive committee of the D. and S't P. R. R. Co., at a meeting held by them on the 5th day of June, A. D. 1872. In witness whereof I have hereunto set my hand and affixed the corporation seal of the said company this 6th day of June, A. D. 1872.

[SEAL.] W. H. PRICE,
Sec'ty D. and S't P. R. R. Co.

ESTIMATE No. 1.

1870, Nov. 15. From Oct. 15 to Nov. 15, 1870.

Delhi division Dav. and S't Paul R. R. Co., to Delaware Co. R. R. Construction Co., D'r.

For excavating 18,005 cub. y'ds of earth, at 20c. per cub. y'd.	$3,601 00
For furnishing and putting in box culverts 2,252 feet b. m. plank, at $35.00 per M	78 82
Total	$3,679 82
Less 20 per cent	735 96
Amount now due	$2,943 85

E. BALDWIN, *Chief Engineer.*

ESTIMATE No. 2.

From Nov. 15, 1870.

DAVENPORT, *Dec.* 15, 1870.

Davenport and S't P. R. R. Co., to Delaware R. R. Construction Co., D'r.

For excavating 20,091 cub. y'ds of earth, at 20 cents per yard, on Delaware division	4,018 20
504 [31] For excavating 123 cub. y'ds of solid rock at $1.00.	123 00
For excavating 900 cub. y'ds loose rock at 70c. per cub. yard	630 00

For putting in 1,262 f't, B. M., of box culverts at $35.00 per M	44 17
For grubbing and clearing 4.58-100 acres, at $10 per acre	45 80
Total	$4,861 17
Less 20 per cent	972 23
	$3,888 94

E. BALDWIN,
Chief Engineer.

ESTIMATE NO. 3.

DELHI, *January* 30, 1871.

From Dec. 15, to Jan. 10, 1871.

Dav. and S't P. R. Co. to Delaware R. R. Construction Co., Dr.

For excavating 18,104 cub. y'ds of earth, at 20 cents per cub. yard	$3,620 80
For excavating 412 cub. y'ds of solid rock, at 1.00 per y'd	412 00
For excavating 239 cub. y'ds of loose rock, at 70c. per yard.	167 30
For furnishing and putting in 1,536 f't, B. M., $35.00 per M. box culverts	53 76
For grubbing and clearing 34-100, at $10	3 40
For furnishing 1,004 ties, at 55 cents for each	552 20
Total	4,809 46
Less 20 per cent	961 89
	3,847 57

E. BALDWIN,
Chief Engineer.

505 [32] ESTIMATE NO. 4. JANUARY ESTIMATE.

FEB'Y 1ST, 1871.

From Jan. 10th to Feb. 1st, 1871.

Dav. and S't P. R. R. Co. to the Delaware R. R. Construction Co., Dr.

For excavating 2,445 cub. y'ds of earth on Delhi the division, at 20 cents per yard	489 00
For excavating 738 cub. y'ds of solid rock, at $1.00	738 00
For excavating 770 cub. y'ds of loose rock, at 70 c. per y'd	539 00
For tunnelling and putting in box culverts 464 B. M. of plank, at $35.00 per M	16 24
For grubbing and clearing one acre at $10.00	10 00
For furnishing 2,378 ties, at 55 c. for each	1,307 00
Total	3,000 14
Less 20 per cent	600 02
	2,400 12

E. BALDWIN.
Chief Engineer.

ESTIMATE No. 5. FEBRUARY ESTIMATE.

M'CH 1ST, 1871.

Dav. and S't. Paul R. R. Co. to Delaware R. R. Construction Co., Dr.

For furnishing 3,728 ties, at 55 c. for each	2,050	40
Less 20 per c't	410	80
	1,640	32

E. BALDWIN,
Chief Engineer.

ESTIMATE No. 6.

Estimate up to the 1st of April, 1871.

ENGINEER'S OFFICE,
Delhi, Delaware County, Iowa.

Davenport and S't Paul R. R. Co. to Delaware R. R. Construction Co., Dr.

For excavating 10,550 cubic yards of earth at 20 cents per yard	2,110	00
506 [33] For excavating 1,274 cub. y'ds of solid rock, at $1.00	1,274	00
For excavating 3,859 cub. yards of loose rock, at 70 c. per yard	2,701	30
For furnishing 11,686 ties, at 55 cents each	6,427	30
For furnishing 445 feet of piling at 25 c. per foot	111	25
For grubbing and clearing one acre, at $10.00	10	00
Total	$12,633	85
Less 20 per cent	2,526	77
	10,107	08

E. BALDWIN,
Chief Engineer.

ESTIMATE No. 7.

ENGINEER'S OFFICE,
Delhi, April 1st, 1871.

Estimate for Delhi division for month ending 31st April, 1871.

Dav. and S't Paul R. R. Co. to Delaware R. R. Construction Co., Dr.

For excavating 24,684 cub. yards of earth, at 20 c. per yard.	$4,936	80
For excavating 1,392 cub. yards of solid rock, at $1.00 per yard	1,392	00
For excavating 1,906 cub. yards of loose rock, at 70 cents per y'd	1,334	20
For furnishing and putting in 2,700 f't B. M. of lumber in box culverts, at $35.00 per M	94	50
For furnishing and delivering 1,605 R. R. ties, at 55 cents for each	882	75

For furnishing and delivering 2,095 feet lineal of piling, at 25 cents per foot	523 75
For grubbing and clearing 5 & 35-100 acres, at $10.00 per acre	53 30
Total	$9,217 50
Less 20 per cent	1,843 50
Amount due	$7,374 00

E. BALDWIN,
Chief Engineer.

507 [34] ESTIMATE No. 8.

ENGINEER'S OFFICE,
Delhi, June 1st, 1871.

Dav. and S't Paul R. R. Co. to Delaware Railroad Con. Co., D'r.

For excavating 33,053 cub. yards of earth, at 20 cents per cub. yard	$6,610 60
For excavating 853 cub. yards of solid rock, at $1.00	853 00
For excavating 2,398 cub. yards of loose rock, at 70 cents per yard	1,678 60
For furnishing and putting in 3,656 feet B. M., at $35.00 per M	127 96
For furnishing and delivering 1,542 R. R. ties, at 55 c	848 10
For furnishing and delivering 2,096 feet lineal of piling, at 25 cents per foot	524 00
For grubbing and clearing 1.5 acres, at $10.00 per acre	15 00
	$10,657 26
Less 20 per cent	2,131 45
	$8,525 81

E. BALDWIN,
Chief Engineer.

ESTIMATE No. 9.

ENGINEER'S OFFICE,
Delhi, July 10th, 1871.

Dav. and S't P. R. R. Co. to Delaware R. R. Construction Co. D'r.

For excavating 28,325 cub. yards of earth, on the Delhi division, at 20 cents	$5,665 00
For excavating 1,149 cub. yards of solid rock, at $1.00	1,149 00
For excavating 1,347 cub. yards of loose rock, at 70 cents per yard	942 90
For furnishing and putting in 3,341 f't, B. M., lumber in box culverts, at $35.00 per M	116 93
For furnishing and delivering 2,066 ties, at 55 cents for each	1,136 30
508 [35] For furnishing and delivering 914 feet (lineal) of piling, at 25 cents per foot	228 50
For grubbing and clearing 4 acres, at $10 per acre	40 00

For furnishing stone and laying 12 cubic y'ds of riprap, at 50 c.	6 00
	$9,284 63
Less 20 per cent	1,856 92
	$7,427 71

E. BALDWIN,
Chief Engineer.

ESTIMATE No. 10.

ENGINEER'S OFFICE, *Delhi, Aug.* 7, 1871.

Dav. and S't Paul R. to Delaware R. R. Construction Company, Dr.

For excavating 10,879 cub. y'ds of earth, at 20 cents per yard	$2,175 80
For excavating 264 cub. y'ds of solid rock, at $1	264 00
For excavating 50 cub. y'ds of loose rock, at 70 cents per yard	35 00
For furnishing 2,436 B. M. feet, put in box culverts, at $35 per M	85 26
For furnishing and delivering 50 railroad ties, at 55 c'ts	27 50
For grubbing and clearing 6 and 97-100 acres, at $10 per acre	69 70
	$2,657 26
Less 20 per cent	531 45
	$2,125 81

E. BALDWIN,
Chief Engineer.

509 [36] ESTIMATE No 11.

ENGINEER'S OFFICE, *Delhi, Sept.* 9, 1871.

Dav. and S't Paul R. R. Co., to Delaware R. R. Construction Co., Dr.

For excavating 28,957 cubic yards of earth, at 20 cents per y'd		$5,791 40
For excavating 351 cub. y'ds of solid rock, at $1 per yard		351 00
For excavating 685 cubic yards of loose rock, at 70 c'ts per y'd		479 50
For furnishing material and putting in 2,392 feet B. M. in box culverts, at $35 per M		83 72
For furnishing 157 ties, at 55 cents each		86 35
For grubbing and clearing 1½ acres, at $10 per acre		15 00
For furnishing and driving 780 lineal feet of piling, at 50 cents per foot, and 500 feet, at 60 cents per foot		
For furnishing and putting up 24,572 feet, B. M., of timber in bridging, at $35 per M	$1,550 02	
Less previous estimate for piles delivered	$1,387 50	162 52
		$6,969 40
Less 20 per cent		1,393 89
		$5,575 60

E. BALDWIN,
Chief Engineer.

ESTIMATE No. 12.

ENGINEER'S OFFICE, *Delhi October 4th*, 1811.

Dav. and S't Paul R Company to Delaware Construction Company, Dr.

For excavating 26,554 cub. yards of earth, at 20 cents per yard	$5,310 80
For excavating 775 yards of solid rock, at $1 per yard	775 00
510 [87] For excavating 509 cub. yards of loose rock, at 70 cents per yard	356 30
For furnishing materials and putting in 3,468 f't B. M. in box culverts, at $35 per M	121 38
For furnishing and delivering 103 ties, at 55 c'ts each	56 65
For grubbing and clearing 2 and 45-100 acres, at $10 per acre	24 50
For putting in 15 yards of riprap, at 50 cents	7 50
For furnishing and driving 300 lineal feet piling, at 50 cents per foot, 20 feet long	150 00
For furnishing and driving 3,500 feet of piling, over 20 feet long, at 60 cents per foot	2,100 00
For furnishing material and erecting 18,828 feet B. M. of bridging, at $35 per M	658 98
	$9,561 11
Less 20 per cent	1,912 22
	$7,648 89

ESTIMATE No. 13, FOR MONTH OF OCTOBER.

ENGINEER'S OFFICE, *Delhi, Nov.* 4, 1871.

Dav. and S't Paul R. R. Co. to Delaware R. R. Construction Co., Dr.

For excavating 18,733 cub. y'ds of earth, at 20 cents per yard	$3,746 60
For excavating 563 cub. yards of solid rock, at $1 per yard.	563 00
For excavating 229 cub. yards of loose rock, at 70c. per yard.	160 30
For furnishing material and putting 1,780 feet B. M. in box culverts, at $35 per M	62 30
For grubbing and clearing 1 25-100 acres, at $10 per a	12 50
For furnishing and driving 80 lineal feet of piling, 20 feet long, at 20 cents per foot	40 00
511 [38] For furnishing and driving 3,222 lineal feet of piling, over 20 feet long, at 60c. per f't	1,933 20
For furnishing material and erecting 74,583 feet B. M. of bridging, at $35 per M	2,610 40
	$9,128 30
Less 20 per cent	1,825 66
	$7,302 64

E. BALDWIN,
Chief Engineer.

ESTIMATE No. 14, FOR NOVEMBER.

ENGINEER'S OFFICE, *Dec.* 15, 1871.

Dav. and S't Paul R. R. Oompany to Delaware R. R. Construction Company, Dr.

For excavating 11,787 cub. y'ds of earth, at 20c. per y'd	$2,357 40

For excavating 50 cub. yards solid rock, $1 per y'd	50 00
For excavating 88 cubic yards of loose rock, at 70 cents per yard	61 60
For furnishing material and putting in 1,500 feet, B. M., lumber in culverts	52 50
For grubbing and clearing 1 25-100 acres, at $10 per acre	17 50
For furnishing and driving 930 lineal f't of piling over 20 f't in length, at 60c. per foot	558 00
For furnishing 16,287 f't B. M. of bridge timber, at $35 per M	570 04
	$3,667 04
Less 20 per cent	733 41
	$2,933 63

E. BALDWIN,
Chief Engineer.

512 [39] ESTIMATE No. 15, MADE APRIL 1, 1872.

ENGINEER'S OFFICE, *Delhi, April* 25, 1872.

Dav. and S't Paul Railroad Co., to Delaware R. R. Construction Company, Dr.

For excavating 6,011 cub. y'ds of earth, at 20 c'ts per yard	$1,202 10
For excavating 290 cub. yards of solid rock, at $1 per yard.	290 00
For excavating 250 cubic yards of loose rock, at 70c. per yard	175 00
For furnishing and delivering 80,000 feet b. m. of bridging, at $25 per M	2,000 00
For furnishing and delivering 12,359 ties, at 55 cents each	6,797 45
For furnishing and delivering 1,630 lineal feet of piling, at 25c. per foot	407 50
For furnishing and delivering 2,100 lineal f't of piling, at 60c. per foot	1,260 00
	$12,132 15
Less 20 per cent	2,426 43
	$9,705 72

E. BALDWIN,
Chief Engineer.

ESTIMATE No. 16.

ENGINEER'S OFFICE, *Davenport, May 1st*, 1872.

Davenport and S't Paul R. R. Company, to Delaware R. R. Construction Co., Dr.

For excavating 25,457 cub. y'ds of earth, at 20c. per y'd	$5,091 40
For excavating 700 cub. y'ds of solid rock, at $1 per yard	700 00
For excavating 2,800 cub. y'ds of loose rock, at 70 cents per yard	1,960 00
513 [40] For furnishing and putting in box culverts 2,624 f't, b. m., of lumber, at $35 per M	91 84

For furnishing and driving 700 lineal f't of piling, at 50c. per f't	350 00
For furnishing and delivering 3,138 ties, at 55 cents each	1,725 90
For grubbing and clearing four acres, at 10 per acre	40 00
Total for the month of April	9,959 14
Less 20 per cent	1,991 82
	7,967 31

E. BALDWIN,
Chief Engineer.

ESTIMATE NO. 17. ESTIMATE FOR MAY, 1872.

ENGINEER'S OFFICE, *Davenport, June 15th*, 1872.

Davenport and S't Paul R. R. Co. to Delaware Railroad Construction Co., Dr.

For excavating 82,229 cub. y'ds of earth, at 20 cents per y'd.	$16,445 80
For excavating 983 cub. y'ds of solid rock, at $1 per y'd	983 00
For excavating 2,193 cubic yards of loose rock, at 70 cents per y'd	1,535 10
For furnishing material and putting 8,780 feet, b. m., of lumber in box culverts, at $35 per M	307 30
For furnishing and delivering 6,328 ties, at 55 cents each	3,480 40
	22,751 60
Less 20 per cent	4,550 32
	18,201 28

E. BALDWIN,
Chief Engineer.

514 [41] ESTIMATE NO. 18.

ENGINEER'S OFFICE, *July 1st*, 1872.

Dav. and S't P. R. R. Co., to Delaware Railroad Construction Co., Dr.

For earth excavation, 34,143 cub. y'ds, at 20 c'ts per y'd	$6,828 60
For solid rock excavation, 758 cub. yards, at $1	758 00
For loose rock excavation, 878 cub. yards, 70 cents per c. yard	614 60
For furnishing ties, 5,939, at 55 cents each	3,266 45
For furnishing and driving piling, 1,260, at 50c. per foot (lineal)	630 00
For furnishing and driving piling, 1,378, at 60 cents per foot (lineal)	826 80
For furnishing and putting up bridging, 81,356 feet, board measure, at $35 per M	2,847 46
	15,771 91
Less 20 per cent	3,154 38
	12,617 53

E. BALDWIN,
Chief Engineer.

No. 19.

Final estimate of Delhi division.

ENGINEER'S OFFICE, *Davenport, Dec.* 28, 1872.

Dav. and S't Paul Ra. R. Co., to Delaware R. R. Construction Co., Dr.

For earth excavation, 486,058 cub. yards, at 20 cents per yard	$97,211	60
For solid rock ex., 12,425 cub. yards, at $1 per c. yard	12,425	00
For loose rock ex., 22,310 cub. yards, at 70 c'ts per yard	15,617	00
For furnishing material, and building culverts and bridges, 462,086 feet, b. m., at $35 per M	16,173	01
515 [42] For furnishing and delivering ties, 63,461, at 55 cents each	34,903	55
For riprap, 27 cub. y'ds, at 50 cents per yard	13	50
For riprap, 70 cub. y'ds, at $1.15 per yard	80	50
For piling, not over 20 feet in length, 3,264 f't, lineal, at 50 cents per foot	1,632	00
For piling, 11,680 f't, at 60 cents per foot	7,008	00
For grubbing and clearing 45.66 acres, at $10 per acre	456	60
	185,520	76

The above is a final estimate for the Delhi division, and includes all former estimates.

E. BALDWIN,
Chief Engineer.

SUPPLIMENTAL ESTIMATE NO. 20.

Davenport and S't Paul Railroad, to Boon & Martin, Dr.

To lumber furnished for bridges, 15,551 feet, b. m., at $15.50 per M	$241 04

Approved May 4th, 1873.

E. BALDWIN,
Chief Engineer.

SUPPLIMENTAL ESTIMATE NO. 21.

MAY 29, 1873.

Davenport and S't Paul Railroad Co., to Delaware R. R. Const. Co., Delhi, Dr.

For furnishing and delivering ties, 152, at 55 cents each	$83 60
For furnishing lumber and putting same in box culverts, 235 f't, at $35 per M	8 22
For earth excavation, 1,080 cub. yards, at 20 c'ts per y'd	216 00
	307 82

Approved.

E. BALDWIN,
Chief Engineer.

516 [43] Due service of copy of this petition is admitted this 15th day Jan'y, 1874.

PETERS & HEATH,
Att'ys for Def't, The D. & S't Paul R. Co.

Filed Jan'y 15, 1874.

G. B. BEVERIDGE, *Clerk.*

And afterwards there was filed in the office of the clerk of said court for said Delaware County, Iowa, an amended petition in said cause, in words and figures following, to wit:

Amended petition in equity.

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thomson and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard.

Par. 1. The plaintiff in the above-entitled suit, by way of amendment to their original petition filed in said suit, says that the amount of $443.49, mentioned in the 24th paragraph of said petition as having been paid on the 11th day of February, A. D. 1871, and applied in part payment of estimate No. 4, should have been $493.49.

Par. 2. That the sum of $30 was paid on or about the 1st day of June, 1871, and applied in part payment of the indebtedness due as 80 per cent. of Estimate No. 8, made by said engineer and described in said original petition.

Par. 3. That the amount of $123.68, mentioned in said paragraph
517 [44] No. 24, as having been paid upon the 22nd day of August, A. D. 1871, and applied in part payment of the indebtedness due as 80 per cent. of Estimate No. 9, should be the sum of $133.68.

Par. 4. That the amount of $291.26, mentioned in said paragraph as having been paid on the 22nd day of August, A. D. 1871, and applied in part payment of the indebtedness due as 80 per cent. of Estimate No. 10 of said engineer, should be $281.26.

Par. 5. That the sum of $578.55, mentioned as having been paid on the 19th day of September, 1871, and applied in part payment of the indebtedness due as 80 per cent. of the estimate of said engineer, marked No. 11 in said petition, should be $598.55, and is hereby corrected.

Par. 6. That the amounts of $100.00, mentioned as having been paid June 1st, 1872, and $100.00 June 3rd, 1872, and applied in payment of the 80 per cent. of Estimate No. 12, in the engineer's report, referred to in said petition, should be one on January 1st, 1872, the other January 3rd, 1872. That the following amounts, applied in payment of the indebtedness of 80 per cent. of Estimate No. 12 aforesaid, and in said petition mentioned as paid in the month of June, 1872, should be on the corresponding days of the month of February, 1872, to wit:

$51.36	dated	June	8,	should be	Feb'y	8, 1872.
130.95	"	"	9,	"	"	9, 1872.
288.50	"	"	12,	"	"	12, 1872.
17.00	"	"	24,	"	"	14, 1872.

Par. 7. That the following amounts, received on or about the respective dates set opposite thereto, were also applied in payment of the indebtedness for the work and materials mentioned in Estimate No. 19 of said engineer, called final estimate in said petition, to wit:

Am. received May 22, 1873	$250 00
Am. received May 26, 1873	224 15
Am. received May 29, 1873	100 00

518 [45] Par. 8. That the amount of $255.74, mentioned in said petition as having been paid on the 31st day of May, 1873, and applied upon the indebtedness arising from the work and materials mentioned in Estimate No. 19, called final estimate, should be $235.74.

Par. 9. That the above, with the amounts mentioned in plaintiff's original petition, are all the payments made to plaintiff upon the contract described in said petition, and all of the payments included in this and said original petition, in the aggregate, amount only to the total sum of one hundred and thirty-nine thousand one hundred and eighty-nine dollars and forty-six cents.

Par. 10. That the amount of indebtedness due under the respective estimates and upon said contract have been demanded many times of said Davenport and S't Paul Railroad Company and said railroad company has refused and still refuses to pay the same.

Par. 11. The plaintiff alleges that the statements of the original petition, as amended herein, are true, and asks judgment and relief, as prayed for in said original petition.

J. M. BRAYTON,
Att'y for Plff.

STATE OF IOWA,
Delaware County, ss:

I, Ancel E. Martin, being duly sworn, say that I am secretary of the board of directors of the plaintiff, named in the foregoing petition, that I have read the same and know its contents and that the matters and things therein stated and set forth are true, as I verily believe.

ANCEL E. MARTIN.

Subscribed by Ancel E. Martin, in my presence and by him sworn to before me on this 19th day of January, 1874.

[SEAL.] G. B. BEVERIDGE, *Clerk.*

519 [46] Service of a copy of the within petition admitted this 19th day of Ja'y, 1874.

PETERS & HEATH,
Att'ys for Def.

Filed Jan'y 19, 1874.

G. B. BEVERIDGE, *Clerk.*

And afterwards there was filed in the office of the clerk of said court an original notice in words and figures following, to wit:

Original notice.

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thomson, and William Dennison, trustees for certain bondholders of said railroad, The Davenport Railway Construction Company, and Lucius Howard.

To the Davenport and S't Paul Railroad Company, John Edgar Thomson, and William Dennison, trustees for certain bondholders of said railroad, The Davenport Railway Construction Company, and Lucius Howard:

You are hereby notified that on or before the 15th day of January, A. D. 1874, there will be on file in the office of the clerk of the circuit court of Delaware County, Iowa, a petition of the Delaware Railroad Construction Company, claiming of you the sum of fifty-five thousand dollars, as money due to said plaintiffs from said Davenport and S't Paul Railroad Company, for breach of contract and for work, labor, and services performed, and materials furnished in the construction of that portion of said railroad situated in Delaware County, also claiming a mechanic's lien on said road, and the enforcement thereof as against all of said defendants for said amount.

520 [47] And you are notified that unless you appear thereto and defend on or before noon of the second day of the January term, A. D. 1874, of said court, which will commence at Delhi on the 26th day of January, A. D. 1874, default will be entered against you, and judgment will be rendered thereon for the amount above claimed, with interest and costs of suit, and for the enforcement of said lien.

No personal claim is made against any of said defendant, except the Davenport and S't Paul Railroad Company.

January 9th, 1874.

J. M. BRAYTON,
Att'y for Plaintiff.

Attached to which was a return of the sheriff of said Delaware County, Iowa, in words and figures following, to wit:

TH ATE OF IOWA,
Delaware County, ss:

I do hereby certify and return that the within original notice came to hand for service on the 10th day of January, A. D. 1874, and that the same day I served the same on the within-named defendant, the Davenport and S't Paul Railroad Company, by reading the same to S. S. Summers, personally, and in his presence and hearing, and by delivering to him personally a true copy thereof, the said S. S. Summers being station and ticket agent for said company in Delhi, Delaware County, Iowa. Done in Delhi, Delaware County, Iowa. The other defendants not found by me in my county.

ABNER DUNHAM,
Sheriff, Delaware County, Iowa.

Fees: Service, 50; mileage (8 miles), 40; copy, 40—$1.30

Filed Jan. 26, 1874.

G. B. BEVERIDGE, *Clerk*.

521 [48] And afterwards, to wit, on the 28th day of January, 1874, there was filed in the office of the clerk of said circuit court, an answer, in words and figures following, to wit:

Answer.

In the circuit court of the State of Iowa, in and for Delaware County.
In chancery.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company and others.

And now, January term, 1874, comes the defendant, the Davenport and S't Paul Railroad Company, and for answer to the petition of the plaintiff herein, says: It admits the making and delivery of the contract in said petition mentioned, admits that under the said contracts the plaintiff performed the work shown by the estimates set forth in the said petition, admits that there is a balance unpaid to the plaintiff of the contract price of the said work, but avers that it hath no knowledge or information concerning the amount thereof.

Further the said defendant avers that at or about the time of the making of the said contract the defendant deposited in the hands of a certain F. B. Doolittle, then and for a long space of time the treasurer of the plaintiff corporation, stock subscriptions and promissory notes amounting to the sum of eighty-three thousand five hundred dollars or thereabout, the same to be taken and collected and the proceeds applied to the payment of the plaintiff, for the work performed by them under the said contract and for other purposes, a large amount of which was so collected and so applied; that defendant cannot now specifically state the items making up the said sum but is informed and believes that if an account be taken as hereinafter prayed the same can be fully shown by the books and papers of the plaintiffs. Fur-
522 [49] thermore, the defendant avers that it turned over to the said Doolittle, a large amount of taxes, voted in the townships of South Fork and Delhi, and authorized said Doolittle to take and receive the same for the purposes aforesaid, of which the said Doolittle took and received a large amount of money to the defendant unknown and appropriated a large amount thereof, to the defendant unknown, for the payment of the plaintiff for said work. Further, the defendant avers that it hath paid to the said Doolittle, for the purposes aforesaid, a large amount of money, to wit, the sum of seventy thousand dollars or thereabouts, upon the drafts of the said Doolittle, a large amount of which has been by him appropriated to the payment of the plaintiff for the work aforesaid. And thereupon the defendant prays that an account be taken of the said several matters herein set forth, and the amount of moneys received therefrom by plaintiff be ascertained.

2. Further, the defendant shows that the plaintiff now holds two certain promissory notes of defendant for the sum of $5,000 each, taken as a conditional payment of a part of the money due for the said work,

and thereupon the defendant prays that the plaintiff be required to surrender up and cancel the said notes, or that upon the election of the plaintiff to retain the same, the same to be taken as a payment to plaintiff of so much of their claim.

3. Def. avers that heretofore, to wit, at the October term of the district court of Delaware County, by the consideration of the said court, a certain Westphall, Hinds & Co. recovered against the said plaintiffs the sum of $2,513.38, and obtained a decree of the said court establishing their lien against the property of this defendant for the payment of their said judgment. The record and proceedings in the said last-mentioned cause are hereby made a part of this answer, the said judgment being for work and labor done and performed by a certain S. Denton & Co., for the plaintiff, in the construction of defendant's road-bed,
523 [50] and thereupon defendant prays that the said judgment with the interest and costs thereon be credited to the defendant upon the claim of the plaintiff.

And thereupon the defendant prays that an account be taken and a decree rendered in accordance with the prayers subjoined to the several paragraphs hereof.

PETERS & HEATH,
Def't's Att'y.

STATE OF IOWA,
Delaware County, ss:

I, James D. Campbell, being duly sworn, do say that I am the general solicitor of the def't, the Davenport and S't Paul Railroad Company, and as such it became my duty to examine all the books and papers of defendant in relation to the several transactions in this answer mentioned that thereby I have knowledge thereof; that I have read the foregoing petition and know the contents thereof; that the statements thereof are true as I verily believe.

J. D. CAMPBELL.

Subscribed by J. D. Campbell in my presence, and by him sworn to before me on this 28th day of January, A. D. 1874.

[SEAL.] W. A. HEATH,
Notary Public of Iowa in and for Delaware County.

Filed Jan. 28, 1874.

G. B. BEVERIDGE, *Clerk.*

And afterwards, to wit, on the 30th day of January, 1874, it being the fifth day of the January term, 1874, of said court, the plaintiff filed a reply to the answer of the said Davenport and S't Paul Railroad Company on file in said cause, in words and figures following, to wit:

524 [51] *Reply.*

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION COMpany
vs.
THE DAVENPORT AND S'T PAUL RAILROAD COMpany and others.

The said plaintiff, for reply to the answer of defendant filed in said

suit, says that the stock subscriptions and promissory notes mentioned in said answer as amounting to the sum of eighty-three thousand five hundred dollars, or thereabouts, were deposited with said F. B. Doolittle, as an officer of said railroad company, defendant, and not as treasurer or officer of plaintiff, said Doolittle, at the time of such deposit, and for some years thereafter, being and acting as assistant treasurer of said defendant, and being now an officer of said defendant.

And plaintiff says that the taxes mentioned in said answer as having been received by said Doolittle were received by him as assistant treasurer of defendant and not as an officer of plaintiff. That a large amount of the seventy thousand dollars or thereabouts mentioned in said answer as having been received by said Doolittle, upon the drafts of defendant, were received by him as said assistant treasurer of defendant; that a large amount, to wit, the sum of twenty thousand dollars, was unpaid at maturity, and was returned to defendant, and that all of the remainder paid to plaintiff has been credited to defendant in said plaintiff's petition. Plaintiff says that F. B. Doolittle is not now, and has not been, during the pendency of this suit, nor for a long time previous thereto, an officer or treasurer of plaintiff, but that he is, and for a long time hitherto has been, an officer, to wit, a member of the board of directors, of defendant, the D. and S't Paul Railroad Company.

525 [52] 2. Plaintiff says that one of the two notes of $5,000 each, mentioned in said answer, has been returned to defendant since the commencement of this suit, and plaintiff is ready and offers to surrender the other note of $5,000 mentioned to defendant for cancellation.

3. Plaintiff says that the judgment mentioned in said answer in favor of S. Denton & Co. has not been paid, and plaintiff is willing that defendant shall have credit therefor upon the claim in this suit whenever said defendant shall pay said claim, and not until such payment.

Plaintiff therefore prays judgment and decree, as asked for in his petition.

J. M. BRAYTON,
Att'y for Plaintiff.

STATE OF IOWA,
Delaware County, ss:

I, Ancel E. Martin, being duly sworn, say that I am an officer, to wit, secretary and member of the board of directors, of plaintiff, named in the foregoing reply; that I have read the same, and that the statements therein made are true as I verily believe.

[SEAL.] ANCEL E. MARTIN.

Subscribed and sworn to by Ancel E. Martin before me and in my presence on this 30th day of January, 1874.

G. B. BEVERIDGE, *Clerk*,
By H. C. HAEBERLE,
Deputy.

Filed Jan. 30, 1874.

G. B. BEVERIDGE, *Clerk.*

And afterwards, to wit, on the 14th day of February, 1875, the referee duly appointed by said court in this cause filed his report in said cause with the clerk of said court, in words and figures following, viz:

To the Hon. S. BAGG,
Judge of the Circuit Court of Delaware County, Iowa :

The undersigned referee, appointed at the January term of
526 [53] the circuit court of Delaware County, Iowa, to report the amount due the plaintiff in the case pending in the said court, entitled The Delaware Railroad Construction Company vs. The Davenport and S't Paul Railroad Company et al., respectfully submits this report :

After taking the oath hereto annexed, the parties came before me at my office in Delhi, the plaintiff appearing by J. M. Brayton, and the defendant, the Davenport and S't Paul Railroad Company, by Peters & Heath, when I proceeded to receive evidence and take testimony. The examination was commenced on the 9th and completed on the 12th day of February, 1874, as shown by the minutes hereto attached. Upon examining the case with the evidence and testimony introduced, I find that the defendant, the Davenport and S't Paul Railroad Company, was indebted to the plaintiff on the 6th day of February, 1874, upon the claim in controversy in this suit, in the sum of fifty-one thousand nine hundred and thirty dollars and fifty-four cents (51,930.54), and that the plaintiff, the Delaware Railroad Construction Company, is entitled to a judgment against said Davenport and S't Paul Railroad Company for said sum of 51,930.54, and costs of suit, to be taxed by the clerk of said court, said judgment to date and bear interest from the said 6th day of February, 1874, at the rate of six per cent. per annum. I further find that the plaintiff is entitled to a judgment of the same date, establishing a mechanic's lien, as prayed in the petition in this suit, said lien to date from the 29th day of Sept., 1870.

In ascertaining the amount due the plaintiff, as aforesaid, I allowed the defendant a credit of two thousand ($2,000) dollars upon the contract, as shown in the Exhibit C and D, as shown in said minutes, deducting that sum as of the 6th day of Feb., 1874.

The following persons were sworn and examined as witnesses, viz, F. B. Doolittle, A. E. Martin, and R. Eddy. The following is the number of days' attendance of each witness respectively :

527 [54] F. B. Doolittle, 3 days; A. E. Martin, 3 days; R. Eddy, 1 day. The following is the amount of time spent by the referee, viz :

On the 9th day of February, 4 hours.
On the 10th day of " 4 hours.
On the 11th day of " 4 hours.
On the 12th day of " 5 hours.

I find that F. B. Doolittle did not receive any stock subscriptions, promis'ory notes for collection, or taxes, as an officer of plaintiff, and that all drafts received by said F. B. Doolittle have been credited by plaintiff to defendant, except such as have been returned to the defendant by the said Doolittle, and one note for $5,000, which is hereto attached, marked " Exhibit B," and which is offered by plaintiff for cancellation.

I further find that judgment in favor of Westphall, Hinds & Co., for work done by S. Denton & Co., for plaintiff, as stated in defendant's answer, is a lien upon the road-bed of the defendant ; and in case said defendant shall pay said judgment of Westphall, Hinds & Co., or any part thereof, such payment shall operate as a payment by defendant upon the judgment in this suit.

HENRY HARGER,
Referee.

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thomson and William Dennison, trustees for certain bondholders of said railroad, The Davenport Railway Construction Company, and Lucius Howard.

On this 9th day of February, 1874, at 9 o'clock a. m., the par-
528 [55] ties appeared in this case before Henry Herger, referee, the plaintiff appearing by J. M. Brayton, its attorney, and the defendant, the Davenport and S't Paul Railroad Company, by Peters & Heath, its attorney, and, by consent of counsel appearing, the hearing of this case is adjourned till 2 o'clock this afternoon. No appearance of the other defendant is made.

On this 9th day of Feb'y, 1874, at 2 o'clock p. m., parties appearing as at 9 o'clock this morning, plaintiff submits in evidence the contract between said Davenport and S't Paul Railroad Company and the Delaware Railroad Construction Company, and the 21 estimates of the engineer, said contract and estimates being the originals, copies of which are annexed to plaintiff's petition; also a receipt from J. S. Conner, treas'r of D. and S't P. R. R. Co. to F. B. Doolittle for a note of $5,000, a copy of which is hereto attached, marked "Exhibit A." Plaintiff also offers a note for $5,000, dated Dec. 4, 1873, made by said Dav. and S't Paul R. R. Co. to F. B. Doolittle, treas. Delaware R. R. Construction Co., which is hereto attached, marked "Exhibit B."

Plaintiff also offers a certified copy of a resolution adopted by the board of directors of said D. and S't P. R. R. Co., June 5, 1872, a copy of which is hereto attached, marked "Exhibit C." Plaintiff also offers a certified copy of a resolution of the board of directors of the Delaware Railroad Construction Company, which is hereto attached, marked "Exhibit D."

Plaintiff then introduced F. B. DOOLITTLE as a witness, who being first duly sworn, testifies as follows:

1. Are you an officer of plaintiff now?

Ans. No.

Int. 2. Are you an officer of the defendant, the railroad company?

Ans. I am.

529 [56] Int. 3. Were you formerly an officer of plaintiff? And if so, state what office?

Ans. I was formerly treasurer of the plaintiff.

Int. 4. What was the entire amount received by you while you were treasurer of plaintiff, did you receive from the defendant?

Ans. One hundred and thirty-nine thousand one hundred and eighty-nine dollars and forty-six cents.

Int. 5. As treasurer of plaintiff, did you receive any stock, subscription or promissory notes for collection?

Ans. No.

Int. 6. Did you, as officer of the plaintiff, receive any taxes levied in South Fork or Delhi township?

Ans. No.

Int. 7. Aside from the two notes of $5,000 each, one of which has

been introduced before the referee, and the receipt for the other, have you received from the defendant any drafts that were not included in the sum you have mentioned?

Ans. None but what have been returned to defendant.

Cross-examination:

Int. 1. In what capacity did you receive stock, subscription and the taxes referred to by you in your direct examination?

Ans. As assistant treasurer of the defendant.

Int. 2. Have any payments been made to plaintiff by defendant, other than those made to you as treasurer of plaintiff, so far as you know?

Ans. There have not, so far as I know.

Int. 3. State the times of the several payments made to plaintiff by defendant, as the same appears on your books, or from your accounts.

530 [57] Ans. I have a schedule of accounts, which I here submit, showing the time and amounts of said payment.

Pending the further answer to this question, the examination was adjourned till to-morrow morning at 9 o'clock a. m.

On this 10th day of February, 1874, at 9 o'clock a. m., examination resumed. The witness compares items in the schedule with those in the petition. At 1 o'clock p. m. examination was adjourned till 2 o'clock p. m. on the 11th day of Feb., 1874.

On this 11th day of February, 1874, at 2 o'clock p. m., examination resumed and testimony of A. E. Martin taken, after which the examination was adjourned till the 12th day of February, 1874, at 2 o'clock p. m. The testimony of A. E. Martin is hereto attached.

On the 12th day of February, 1874, at 2 o'clock p. m., examination resumed and the testimony of R. Eddy taken, which is hereto attached.

The schedule of accounts submitted by F. B. Doolittle, on the 9th day of February, having been compared with the petition, was found to be substantially the same, with the following exceptions:

1st. A credit of $2,695.45, which should appear as of the 6th day of March, 1873, instead of the same amount of money which had been credited, in smaller amounts, on the 27th, 29th and 31st of May, and 2d, 3d, 16th, and 26th days of June, 1873.

2d. Of a credit on the 20 day of April, of 1873, $831.22; of a credit on the 29 day of April, of 1873, 193.26; of a credit on the 5 day of May, of 1873, 232.80; of a credit on the 5 day of May, of 1873, 457.06; of a credit on the 2 day of May, of 1873, 97.08; of a credit on the 31 day of Jan'y, of 1873, 360.45, which amounts had been credited as of the 20th day of May, 1873.

531 [58] At this point both parties said they had no further evidence and testimony to produce, and the matter was submitted to the referee.

Testimony of A. E. Martin? (R. Eddy.)

This 12th day of February, 1874, R. Eddy being duly sworn, testifies as follows, viz:

Int. 1. What office, if any, do you hold for the plaintiff?

Ans. Treasurer.

Int. 2. Have you been a member of that corporation since its origin?

I have.

Int. 3. State what person or persons, besides yourself, have been treasurer of said company.

Ans. F. B. Doolittle.

Int. 4. Is he the only person, other than yourself, who has been treasurer of plaintiff?

Answer. Yes.

Int. 5. While you were treasurer of plaintiff, has there been any payment made to you as such treasurer by the Davenport and S't Paul Railroad Company?

Ans. No.

Int. 6. Have you now, or have you had since you were treasurer, any books of said company?

Ans. No.

Int. 7. State what papers, if any, you have in your possession as treasurer of plaintiff while you have held the office.

Ans. The note and receipt filed with the referee and a statement of accounts made by F. B. Doolittle.

Int. 8. Did the statement of accounts you refer to show any
532 [59] greater credit to the Davenport and S't Paul R. Co. than the sum of one hundred and thirty-nine thousand one hundred and eighty-nine dollars and forty-six cents ($139,189.46)?

Answer. No.

Testimony of R. Eddy? (*A. E. Martin*).

This 11th day of Feb., 1874, A. E. MARTIN, being duly sworn, says:

Int. 1. Are you an officer of plaintiff?

Ans. I am.

Int. 2. What office do you hold?

Ans. Secretary.

Int. 3. Do the books in your office show that the payments made by the defendant to plaintiff exceed the sum of one hundred and thirty-nine thousand one hundred and eighty-nine dollars and thirty-six cents?

Ans. They do not.

Int. 4. How long have you been secretary of plaintiff?

Ans. Since December, 1870.

EXHIBIT A.

Copy of receipt of J. S. Conner, Treas.

DAVENPORT AND S'T PAUL RAILROAD CO.,
Davenport, Iowa, Jan'y 27, 1874.

F. B. DOOLITTLE, ESQ., *Delhi, Iowa*:

DEAR SIR: I am to-day in receipt of yours of the 26th, enclosing company's promissory note, dated Dec. 3, 1873, at sixty days, for $5,000, given to you as treasurer of Delaware R'y Construction Company.

Yours, respectfully,

J. S. CONNFR,
Treasurer.

533 [60] EXHIBIT B.

Copy of note attached to report of referee.

$5,000.] DAVENPORT, IOWA, *Dec.* 4, 1873.

Sixty days after date, we promise to pay to the order of F. B. Doo-

little, treas. Delaware R. R. Construction Company, five thousand dollars, at the Davenport National Bank, value received, with ten per cent. interest after maturity.

Davenport National Bank.

DAV. & S'T PAUL R. R. CO.,
By J. S. CONNER, *Treas.*

EXHIBIT C.

At a meeting of the executive committee of the board of directors of the Davenport and S't Paul R. R. Co., held at the office of the company, No. 47 Brady street, Davenport, Iowa, June 5, 1872, the following resolution was unanimously adopted:

Resolved, That this company hereby consents, and does agree, to abrogate the following clause in the contract made with the Delaware Railroad Construction Company, signed August 6, 1870, to wit, the words:

"All the money for the work hereinbefore specified to be paid by the citizens of Delaware County,"

On the condition and agreement by the said company, by a resolution of its board of directors, to abate of its claim under said contract the sum of two thousand dollars on final settlement.

I hereby certify that the above is a true and exact copy of a resolution adopted by the executive committee of the D. & S't P. R. R. Co., at a meeting held by them on the 5th day of June, A. D. 1872.

534 [61] In witness whereof I have hereunto set my hand and affixed the corporate seal of the said company, this 6th day of June, A. D. 1872.

[SEAL.]

W. H. PRICE,
Sec't'y D. & S't P. R. R. Co.

EXHIBIT D.

DELHI, *July 1st*, 1872.

At a meeting of the board of directors of the Delaware Railroad Construction Company, in Delhi, Iowa, July 1st, 1872, the following certified copy of a resolution passed June 5th, 1872, by the executive committee of the board of directors of the Davenport and S't Paul Railroad Company, was read, spread upon the records, and placed on file, to wit:

"At a meeting of the executive committee of the board of directors of the Davenport and S't Paul R. R. Co., held at the office of the company, No. 47 Brady street, Davenport, Iowa, June 5, 1872, the following resolution was unanimously adopted:

"Resolved, That this company hereby consents, and does agree, to abrogate the following clause in the contract made with the Delaware Railroad Construction Company, signed August 6, 1870, to wit, the words: 'All the money for the work hereinbefore specified to be paid by the citizens of Delaware County,' on the condition and agreement of the said company, by a resolution of its board of directors, to abate of its claim under said contract the sum of two thousand dollars on final settlement."

I hereby certify that the above is a true and exact copy of a resolution adopted by the executive committee of the D. and S't P. R. R. Co. at a meeting held by them on the 5th day of June, A. D. 1872.

In witness whereof I have hereunto set my hand and affixed the corporation seal of said company this 6th day of June, A. D. 1872.

[SEAL.]

W. H. PRICE,
Sec't. D. and S't Paul R. R. Co.

535 [62] When the following resolution was unanimously adopted:

Resolved, That the terms of a resolution passed by the executive committee of the board of directors of the D. & S't P. R. R. Co., a copy of which has just been read, spread upon the records, and placed upon file, be and are hereby accepted; and that we hereby agree to abate of our claim two thousand dollars on final settlement, as condition in said resolution. Adjourned.

A. E. MARTIN,
Sec't'y of Del. R. R. Con. Co.

I hereby certify that the above is a true and exact copy of a resolution and proceedings of the executive committee of the Delaware R. R. Cons. Co. at a meeting held by them on the 1st day of July, A. D. 1872.

In witness whereof I have hereunto set my hand this 9th day of Feb., 1874.

A. E. MARTIN,
Sec't'y Del. R. R. Con. Co.

STATE OF IOWA,
Delaware County:

I, Henry Harger, being duly sworn, say that I will well and faithfully hear and examine the case pending in the circuit court of Delaware County, Iowa, entitled "The Delaware Railroad Construction Company against the Davenport and S't Paul Railroad Company and others," wherein I have been appointed referee, and that I will make a just and true report therein, according to the best of my understanding.

HENRY HARGER.

Signed by Henry Harger in my presence and by him sworn to before me on this 9th day of February, A. D. 1874.

[SEAL.] JAMES L. STONE,
Notary Public.

536 [63] The foregoing report of Henry Harger having been submitted and examined by me, is approved, and the clerk of the circuit court of Delaware County is directed to enter judgment and decree in accordance with the finding and report of said referee and the minutes made at the Jan. term of the circuit court of Delaware County, in the case of the Delaware Railroad Construction Company against the Davenport and S't Paul Railroad Company and others, to bear date upon February 6, 1874.

Dated this 13th day of Feb., 1874.

S. BAGG,
Circuit Judge, 9th Jud. Dist.

Filed Feb'y 14, 1874.

G. B. BEVERIDGE, *Clerk.*

And afterwards, to wit, on the 6th day of February, A. D. 1874, it being the 11th day of the regular January term, 1874, of the said circuit court, and on the 14th day of February, 1874, after the close of said term, and in the vacation of said court, the following proceedings were had, done, and entered of record in the proper records of the said court, by the clerk of said court, in words and figures following, to wit:

Petition to enforce mechanic's lien.

THE DELAWARE RAILROAD CONSTRUCTION Company
against
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thomson and William Dennison, trustees for certain bondholders of said railroad, The Davenport Railway Construction Company, and Lucius Howard. } No. 1141.

On this 6th day of February, A. D. 1874, this cause came on for hearing upon the defendant's motion for a reference, the plaintiff, the Delaware Railroad Construction Company, appearing by J. M. Brayton, and the defendant, the Davenport and S't Paul Railroad Company,
537 [64] appearing by Peters and Heath; and the motion for a reference is overruled, and the court proceeds to receive evidence in the cause, when, by agreement of the parties, to wit, the plaintiff, and the Davenport and S't Paul Railroad Company, the case, as to these parties, is referred to Henry Harger, esq., who appears in open court and accept' the appointment of referee, with power to examine witnesses, books, and papers, and accounts, and upon the findings of said referee being reported to the judge of this court, a judgment by agreement of said parties in open court is to be entered of the amount due, and a decree for a mechanics' lien to be made establishing such lien, the hearing to commence on Monday morning, Fe'y 9th, 1874, at nine o'clock, a. m., at the office of said Harger, in Delhi, Iowa, and to continue from day to day until completed. And by said agreement of said parties the judgment is to be entered as of the last day of this January term, 1874, of this court, and the cause is, by order of court, continued as to all the defendants except said Davenport and S't Paul Railroad Company.

The said referee having, in accordance with said agreement and said order, taken the proper oath and proceeded with the hearing and examination of said cause, and having filed his report upon this 14th day of February, 1874, with the approval of said judge to whom the same had been submitted,

In accordance with said agreement, and the findings of said referee, and the order of said judge, the following judgment and decree is entered:

It is ordered, adjudged, and decreed that the defendant, the Davenport and S't Paul Railroad Company, pay to said plaintiff the sum of fifty-one thousand nine hundred and thirty dollars and fifty-four cents, and costs of suit, taxed at dollars, the said sum first above mentioned being the sum found by said referee to be due to said plaintiff from said defendant on the said 6th day of February, A. D. 1874, and judgment for said sum and costs is rendered against said de-
538 [65] fendant, the Davenport and S't Paul Railroad Company, and in favor of said plaintiff, to bear interest at the rate of six per cent. per annum.

It is further ordered, adjudged, and decreed that a mechanic's lien be established in favor of said plaintiff upon the following property of the defendant, to wit: The portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of way, the road bed, the track, depot building, side tracks, and land on

which the same are situated, and all fixtures connected with said grounds and building, and all the right, title, and interest of said defendant in and to the land upon which said improvements are situated, said lien to date from the 29th (twenty-ninth) day of September, A. D. 1870, and to continue in force against said Davenport and S't Paul Railroad Company, and all persons having and claiming liens or right to said property from said railroad company subsequent to that date, until final payment of said judgment and costs.

It is also ordered, adjudged, and decreed said lien be enforced against said property, and that a special execution issue against said property, and that plaintiff have a general execution against any other property of said defendant, the Davenport and S't Paul Railroad Company, for the payment of said judgment, costs, and accruing costs.

It appearing from the pleadings and the report of the referee that Westphal, Hinds & Co., at the October term of the district court of Delaware County, Iowa, obtained a judgment for work done by S. Denton & Co., for the present plaintiff upon said railroad, and that a mechanic's lien be established by said judgment for $2,531.38, it is ordered, adjudged, and decreed that in case said Davenport and S't Paul Railroad Company shall pay said judgment of Westphal, Hinds & Co., or any part thereof, such payment shall operate as a payment upon the judgment in this suit, and it appearing from the report of said referee
539 [66] that the stock subscriptions, promissory notes, and taxes mentioned in defendants' answer were not received by F. B. Doolittle, treasurer of plaintiff, it is decreed that plaintiff is not entitled to account therefor, and this cause is continued as to all the defendants except said Davenport and S't Paul R. R. Co.

This decreed this 6th day of February, A. D. 1874.

And afterwards, during the further progress of said cause in said court, and on the 6th day of April, 1874, plaintiff filed in the office of the clerk of the said circuit court an affidavit in words and figures following, to wit:

STATE OF IOWA,
Delaware County, ss:

I, J. M. Brayton, being duly sworn, say that I am attorney for the plaintiff in the suit pending in the circuit court of Delaware County, Iowa, entitled, "The Delaware Railroad Construction Company against the Davenport and S't Paul Railroad Company, John Edgar Thomson and William Dennison, trustees of certain bondholders of said railroad, and other defendants," and that personal service of original notice in said suit cannot be made upon the defendants, John Edgar Thomson and William Dennison, trustees of certain bondholders of said railroad, within the State of Iowa, and they are non-residents of said State of Iowa.

J. M. BRAYTON.

Subscribed to and sworn to by J. M. Brayton before me on this 6th day of April, A. D. 1874.

[SEAL.]

G. B. BEVERIDGE.
Clerk District C't, Del. Co., Iowa.
By H. C. HABERLE,
Dep'y.

Filed Apr. 6th, 1874.

G. B. BEVERIDGE, *Clerk.*

And afterwards, during the further progress of said cause in said court, and on the 7th day of April, 1874, plaintiff filed in the office of the clerk of said circuit court a supplemental petition, in words and figures following, to wit:

540 [67] *Sup'limental petition.*

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION COMpany
vs.
THE DAVENPORT AND S'T PAUL RAILROAD COMpany, John Edgar Thomson and William Dennison, trustees for certain bondholders of said railroad, and others.

And now comes the plaintiff in this suit and states that since the commencement of this suit, to wit, on the 6th day of February, A. D. 1874, a decree has been rendered by this court against the Davenport and S't Paul Railroad Company, a copy of said decree being hereto annexed and made a part of this supplimental petition, by which judgment was rendered against said railroad company, in favor of said plaintiff, for the sum of fifty-one thousand nine hundred and thirty dollars and fifty-four cents, besides costs of suit, and the mechanic's lien claimed in the original petition in this suit was established, as claimed in said petition. Wherefore plaintiff asks that the remaining defendants be foreclosed of all rights of redemption of the property described in said original petition; that said lien be established against the remaining defendants in said suit; that it be declared paramount to all claims of said defendant, and that plaintiff have such other and further relief as may be equitable.

J. M. BRAYTON,
Att'y for Pl'ff.

STATE OF IOWA,
Delaware County, ss:

I, A. E. Martin, being duly sworn, say that I am secretary of the company plaintiff in the above-entitled suit, and member of the
541 [68] board of directors of said company; that I have heard said petition above written read, and know its contents, and that the statements therein made are true as I verily believe.

A. E. MARTIN.

Signed by A. E. Martin in my presence and by him sworn to before me on this 7th day of Apri', A. D. 1874.

[SEAL.] G. B. BEVERIDGE, *Clerk*,
By H. C. HAEBERLE, *Deputy*.

Copy of record mentioned in foregoing petition.

Petition to enforce mechanic's lien, drawn by J. M. Brayton.

THE DELAWARE RAILROAD CONSTRUCTION COMpany
vs.
THE DAVENPORT AND S'T PAUL RAILROAD COMpany, John Edgar Thomson, William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard. } No. 1141.

On this 6th day of February, A. D. 1874, this cause came on for hear-

ing upon the defendant's motion for a reference, the plaintiff, the Delaware Railroad Construction Company, appearing by J. M. Brayton, and the defendant the Davenport and S't Paul Railroad Company appearing by Peters & Heath; and the motion for a reference is overruled; and the court proceeds to receive evidence in the cause, when, by agreement of the parties, to wit, the plaintiff and the Davenport and S't Paul Railroad, the case as to these parties is referred to Henry Harger, esq., who appears in open court and accepts the appointment of referee, with power to examine witnesses, books, papers, and accounts; and upon the findings of said referee being reported to the judge of this court, a judgment by agreement of said parties in open court is to be entered of the amount due, and a decree for a mechanics' lien to be made estab-
542 [69] lishing such lien, the hearing to commence on Monday morning, February 9th, 1874, at 9 o'clock a. m., at the office of said Harger, in Delhi, Iowa, and to continue from day to day until completed. And by said agreement of said parties the judgment is to be entered as of the last day of this January term, 1874, of this court, and the cause is, by order of court, continued as to all the defendants except said Davenport and S't Paul Railroad Company.

The said referee having, in accordance with said agreement and said order, taken the proper oath and proceeded with the hearing and examination of said cause, and having filed his report upon this 14th day of February, 1874, with the approval of the said judge to whom the cause had been submitted, in accordance with said agreement and the finding of said referee and the order of the said judge, the following judgment and decree is entered: It is ordered, adjudged, and decreed that the defendant the Davenport and S't Paul Railroad Company pay to said plaintiff the sum of fifty-one thousand nine hundred and thirty dollars and fifty-four cents, and costs of suit taxed at dollars, the said sum first above mentioned being the sum found by said referee to be due to said plaintiff from said defendant on the said 6th day February, A. D. 1874, and judgment for said sum and costs is rendered against said defendant the Davenport and S't Paul Railroad Company, and in favor of said plaintiff, to bear interest at the rate of six per cent. per annum.

It is further ordered, adjudged, and decreed that a mechanic's lien be established in favor of said plaintiff upon the following property of the defendant, to wit, the portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of way, the road-bed, the track, depot buildings, side track, and land on which the same are situated, and all fixtures connected with said grounds and buildings, and all the right, title, and interest of said de-
543 [70] fendant in and to the land upon which said improvements are situated, said lien to date from the 29th (twenty-ninth) day of September, A. D. 1870, and to continue in force against said Davenport and S't Paul Railroad Company, and all persons having or claiming liens or right to said property from said railroad company subsequent to that date, until the final payment of said judgment and costs.

It is also ordered, adjudged, and decreed said lien be enforced against said property, and that a special execution issue against said property, and that plaintiff have a general execution against any other property of said defendant the Davenport and S't Paul Railroad Company, for the payment of said judgment, costs, and accruing costs.

It appearing from the pleadings and the report of the referee that Westphall, Hinds & Co., at the October term of the district court of Delaware County, Iowa, obtained a judgment for work done by S. Denton &

Co. for the present plaintiff upon said railroad, and that a mechanic's lien was established by said judgment for $2,531.38, it is ordered, adjudged, and decreed that in case said Davenport and S't Paul Railroad Company shall pay said judgment of Westphall, Hinds & Co., or any part thereof, such payment shall operate as a payment upon the judgment in this suit; and it appearing from the report of said referee that the stocks, subscription, promissory notes, and taxes mentioned in defendant's answer were not received by F. B. Doolittle, treasurer of plaintiff, it is decreed that plaintiff is not entitled to account therefor.

Thus decreed this 6th day of February, A. D. 1874.

STATE OF IOWA,
Delaware County, ss:

I, G. B. Beveridge, clerk of the circuit court of Iowa in and for Delaware County, do hereby certify that the above and foregoing is a true copy and transcript of decree and judgment entry in the action wherein the Delaware Railroad Construction Company is plaintiff and the Davenport and S't Paul Railroad Company et al. defendant, as fully as the same appears of record in my office.

544 [71] In witness whereof I have hereunto set my hand and affixed the seal of said court, at my office in Delhi, in said county, this 28th day of March, A. D. 1874.

[SEAL.] G. B. BEVEBIDGE, *Clerk*,
By H. C. HAEBERLE, *Deputy*.

Filed April 7, 1874.

G. B. BEVERIDGE, *Clerk*.

And afterwards, to wit, on the 5th day of May, 1875, in the further progress of said cause in said court, there was filed in the office of the clerk of said court an affidavit of J. B. Swinburne, publisher, with a copy of original notice attached thereto, in words and figures following, wit:

STATE OF IOWA,
Delaware County, ss:

I, J. B. Swinburne, being duly sworn, depose and say that I am publisher of the Delhi Monitor, a newspaper published weekly in Delhi in said county.

And that the notice in the case of Delaware R. R. Construction Co. and the D. and S't P. R. R. Co., a copy of which is hereto attached, was published in said newspaper for official notice for four weeks consecutively, the first publication having been made on the 9th day of April, 1874, and the last on the 30th day of April, 1874.

J. B. SWINBURNE.

Subscribed by J. B. Swinburne, and by him sworn to before me, clerk circuit court in and for Delaware County, Iowa, this 5th day of May, 1874.

Witness my hand and seal the date last above written.

[SEAL.] G. B. BEVERDIGE, *Clerk*,
By H. C. HAEBERLE, *Dep'ty*.

Printers' fees, $16.85; acknowledgement, .25—$17.10. G. B. B.

545 [72] *Original notice.*

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
against
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thomson and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard.

To the Davenport and S't Paul Railroad Company, John Edgar Thomson and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard:

You are hereby notified that there is now on file in the office of the clerk of the circuit court of Delaware County, Iowa, a petition of the Delaware Railroad Construction Company, claiming of the Davenport and S't Paul Railroad Company the sum of fifty-five thousand dollars ($55,000), as money due upon contract and for work, labor, and services performed, and materials furnished in the construction of that portion of the Davenport and S't Paul Railroad situated in Delaware County, and claiming a mechanic's lien upon all of said portion of said railroad, and asking that said lien be established and enforced upon all of said portion of said railroad, including road-bed, right of way, tracks, culverts, bridges, depot grounds, depot buildings, and all fixtures thereto, as against all of said defendants.

You are also notified that there is on file an amended petition, and a supplemental petition, claiming that judgment and decree has been rendered in this suit on the 6th day of February, A. D. 1874, against said defendants the Davenport and S't Paul Railroad Company, for the sum of fifty-one thousand nine hundred and thirty dollars
546 [73] and fifty-four cents ($51,930.54) and costs of suit, and establishing said mechanic's lien, as above claimed, and asking that said mechanic's lien be established and enforced against all of said defendants, and that they be barred of all right of redemption of said property above mentioned.

And unless you appear and answer, or make defense thereto, on or before noon of the second day of the May term of said circuit court, which will commence at Delhi on the 18th day of May, A. D. 1874, default will be entered against you, and judgment and decree will be rendered by said court as above claimed, and as asked in said petition.

J. M. BRAYTON,
Attorney for Plaintiff.

Filed May 5, 1875.

G. B. BEVERIDGE, *Clerk.*

And afterwards, during the further progress of said cause in said court, and on the 6th day of May, 1874, the sheriff of Delaware County returned to the clerk of said court the execution before issued in said cause, with the return of his doings under and by virtue of said execution in words and figures following, to wit:

Execution.

STATE OF IOWA,
Delaware County, ss:

The State of Iowa to the sheriff of Delaware County, Iowa, greeting:

Whereas, on the 6th day of February, A. D. 1874, in an action pending in the circuit court of Delaware County, Iowa, wherein the Delaware Railroad Construction Company was plaintiff, and the Davenport and S't Paul Railroad Company and others were defendants, said court rendered judgment in favor of said Delaware Railroad Construction Company and against said Davenport and S't Paul Railroad Com-
547 [74] pany, for the sum of fifty-one thousand nine hundred and thirty dollars and fifty-four cents debt, besides costs of suit, taxed at $121.30, and also establishing plaintiff's mechanic's lien for said sum upon, and ordered that said lien be enforced against, the following described property of said defendant, to wit, all that portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of way, the road-bed, the track, depot buildings, side-tracks, and land on which the same are situated, and all fixtures connected with said grounds and buildings, and all right, title, and interest of the said Davenport and S't Paul Railroad Company in and to the land upon which the said improvements are situated:

Now, therefore, you are hereby commanded to cause to be made of the property, goods, and chattels, lands and tenements, including the property above described, the said sum of fifty-one thousand nine hundred and thirty dollars and fifty-four cents, debt, and interest thereon at the rate of six per cent. per annum, from said 6th day of February, A. D. 1874, and $121.30 costs, together with all legal costs that may accrue by virtue of this writ, by levy and sale thereof, according to law.

And have you said sums of money before our said court within seventy days from the date hereof, to render to the said plaintiff, and have you then and there this writ, with your doings hereon.

Witness G. B. Beveridge, clerk of said court, with the seal thereof hereto affixed, this 17th day of February, A. D. 1874.

[SEAL.] G. B. BEVERIDGE,
Clerk Circuit Court, Delaware County, Iowa.

548 [75] *Sheriff's return of execution.*

STATE OF IOWA,
Delaware County, ss:

I, Abner Dunham, sheriff of Delaware County, Iowa, do hereby certify and return that the annexed execution came to hand for service on the 17th day of February, A. D. 1874, at 3½ o'clock p. m.; that on the same day I levied upon the following-described property, in Delaware County, Iowa, as the property of the Davenport and S't Paul Railroad Company, to wit: all that portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of way, the road-bed, the track, depot buildings, side tracks, and land upon which the same are situated, and all fixtures connected with said grounds and buildings, and all the right, title, and interest of

the said Davenport and S't Paul Railroad Company in and to the land upon which the said improvements are situated.

And on the 18th day of February, A. D. 1874, I proceeded to advertise for sale, by posting up three notices thereof, one of which was posted on the front door of the court-house, in Delhi, that being the place where the last district and circuit courts were held in said county, and one notice in a public place in Oneida Township, and one notice in a public place in Delaware Township, in said county, and by publication thereof, for two consecutive weeks before the day of sale, in a weekly newspaper, printed and published in Delhi, in said county, and called the Delhi Monitor.

That afterwards, to wit, on the 19th day of March, A. D. 1874, at 9¼ o'clock a. m., an order was served upon me, a copy of which is hereto annexed, marked "Exhibit A," whereby action in this execution is stayed until further orders. And whereas, on the 4th day of April,
549 [76] A. D. 1874, a stipulation in writing was entered into by the parties, agreeing that the plaintiff or sheriff have the right to proceed with the execution issued without further order from the judge of said court, that said stipulation or agreement was filed in the clerk's office of the circuit court of Delaware County, Iowa, on the 4th day of April, A. D. 1874, and I further certify and return that, by virtue of said execution and the filing of said stipulation, I did on the 4th day of April, A. D. 1874, advertise by posting written and printed notices thereof at three public places in said county, one of which was posted on the front door of the court-house, in Delhi, where the last district court was held in said county, and one in Milo Township, and one in Oneida Township in said county, and by causing said notice to be published for two weeks in the Delhi Monitor, a newspaper printed and published in Delhi in said Delaware County, Iowa; that on the 4th day of May, A. D. 1874, I caused said property to be appraised by two disinterested householders of the neighborhood, one of whom, to wit, W'm Price, was chosen by J. M. Brayton, attorney for plaintiff, and the other, to wit, Albert Booner, was chosen by the officer issuing the writ, who returned to me in writing the appraisement as made by them, signed and sworn to; said appraisement bill is hereto annexed, marked "Exhibit B," and made a part of this return; and I further certify and return that on the 4th day of May, A. D. 1874, at ten o'clock a. m., pursuant to said notice, at the front door of the court-house, in Delhi, in said county of Delaware, I offered at public auction the depot buildings and depot grounds at the village of Hopkinton, in said county, and no bid was made therefor, and then offered, separately, the depot buildings and grounds at the village' of Delhi, Delaware, and Greely, and no bid was made for either of them; I then offered for sale, separately, each mile of said railroad, commencing at the south line of said county, and no bid was made
550 [77] therefor; I then offered for sale all of said property levied upon, and R. Eddy, treasurer of plaintiff, offered therefor the sum of $53,100, in trust for said plaintiff, and there being no higher bid made at said sale, the same was sold to R. Eddy, treasurer of said Delaware Railroad Construction Co., for the sum of $53,100. And I, no said day, executed to said purchaser a deed of said property, and gave him a certificate of purchase thereof, whereby said writ is partially satisfied. I further certify that the following are the costs accruing on this writ since the same came into my hands, to wit:

Serving execution and mileage	$2 10
Writing notices	2 40

Mileage posting notices	2 00
Notice of sale to defendant	2 40
Notice to choose ap'r	1 60
Appr's fees	2 00
Publisher's fees	15 75
Deed	1 00
Sale, 1 day	1 00
Commission	$268 18
	$298 43

ABNER DUNHAM,
Sheriff Delaware County, Iowa.

Filed May 16, 1874.

G. B. BEVERIDGE, *Clerk.*

And afterwards, to wit, on the 18th day of May, A. D. 1874, it being the first day of the regular May term, 1874, of said court, an original notice with the return of the sheriff of Delaware County, Iowa, and of Scott County, Iowa, thereon, was filed in the office of the clerk of said court, the same being in words and figures following, to wit:

551 [78] *Original notice.*

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company *against* THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thomson and William Dennison, trustees for certain bondholders of said railroad, The Davenport Railway Construction Company and Lucius Howard.

To the Davenport and S't Paul Railroad Company, John Edgar Thomson and William Dennison, trustees for certain bondholders of said railroad, The Davenport Railway Construction Company and Lucius Howard:

You are hereby notified that there is now on file, in the office of the clerk of the circuit court of Delaware County, Iowa, a petition of the Delaware Railroad Construction Company, claiming of the Davenport and S't Paul Railroad Company the sum of fifty-five thousand dollars, as money due upon contract, and for work, labor and services performed and materials furnished in the construction of that portion of the Davenport and S't Paul Railroad situated in Delaware County, and claiming a mechanic's lien upon all of said portion of said railroad, and asking that said lien be established and enforced upon all of said portion of said railroad, including road-bed, right of way, tracks, culverts, railroad bridges, depot grounds, depot buildings, and all fixtures thereto, as against all of said defendants.

You are also notified that there is on file an amended petition and a supplemental petition, claiming that judgment and decree has been rendered in this suit, on the 6th day of February, A. D. 1874, against said defendant, The Davenport and S't Paul Railroad Company, for the

sum of $51,930.54 and costs of suit, and establishing said me-
552 [79] chanic's lien, as above claimed, and asking that said mechanic's lien be established and enforced against all of said defendants, and that they be barred of all right of redemption of said property above mentioned.

And unless you appear and answer or make defense thereto on or before noon of the second day of the May term of said circuit court, which will commence at Delhi on the 18th day of May, A. D. 1874, default will be entered against you, and judgment and decree will be rendered by said court as above claimed and as asked in said petition.

J. M. BRAYTON,
Attorney for Plaintiff.

Rec'd this notice April 10, '74.

H. LEONARD,
Sheriff of Scott Co., Iowa.

STATE OF IOWA,
Scott County, ss:

I hereby certify that on this 10th day of April, A. D. 1874, I served the within notice upon the within-named defendant, the Davenport Railway Construction Co., by personally reading the same to J. M. Brown, superintendent of said company, and by delivering him a true copy thereof, in the city of Davenport, Scott County, Iowa, the other within-named defendants not being found by me in Scott Co., Iowa.

HARVEY LEONARD,
Sh'ff of Scott County, Iowa,
By F. GEISE, *Deputy.*

Service, 50; copy, 50; mileage, 20—$1.20.

STATE OF IOWA,
Delaware County, ss:

I do hereby certify and return that the within notice came to hand for service on the 26th day of April, A. D. 1874, and that, after due search, do return none of the within-named defendants found in my
553 [80] county, except the Davenport and S't Paul Railroad Company, who have been served.

ABNER DUNHAM,
Sheriff Delaware Co., Iowa.

Fees: Mileage (40 miles), $2.

Filed May 18, 1874.

G. B. BEVERIDGE, *Clerk.*

And afterwards, to wit, on the 22d day of May, 1874, it being the 5th day of the regular May term, 1874, of the said court, in the further progress of said cause in said court the following proceedings in said cause were had, done, and entered of record in the proper record of said court, to wit:

THE DELAWARE RAILROAD CONSTRUCTION COMpany
vs.
THE DAVENPORT AND S'T PAUL RAILROAD COMpany, John Edgar Thomson, William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company and Lucius Howard. } No. 1141. Equity.

This cause is called for hearing, when, upon motion of plaintiff, the

case is dismissed as to the defendant Lucius Howard, and it appearing to the court, from the inspection of the record and proofs in the case, that the original notice in this case had been served upon the defendants, the Davenport Railway Construction Company, and John Eagar Thomson and William Dennison, trustees for certain bondholders of said railroad, more than ten days previous to the first day of this court, they having failed to answer, are adjudged to be in default. And upon hearing and considering the proofs submitted by plaintiff, the court finds the allegations of the original, amended, and supplemental petitions to be true.

It is therefore considered, ordered, and adjudged that plaintiff have the relief asked for in said petitions, and the mechanic's lien be
554 [81] established as against the above-named defendants, upon the property described in the former decree in this case at the February term, A. D. 1874, and as therein established against said Davenport and S't Paul Railroad Company, and that said defendants be forever barred and foreclosed from all right of redemption of, in, or to the said property and every part thereof, and that the rights of plaintiff be declared to be superior and paramount to any and all claims or rights of said defendants to the same or any part thereof.

Thus decreed this 22d day of May, 1874.

Be it further remembered that afterwards, during the further progress of said cause in said court, at the January term, A. D. 1875, of said court, on the second day of said term, to wit, on the 26th day of January, 1875, there was filed in the office of the clerk of said court a notice for a new trial of said cause, on behalf of William Dennison, trustee, etc., and the answer of William Dennison, trustee, and with a bond for security for the costs of the retrial of the said cause, in the words and figures following, to wit:

Motion for new trial.

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION COMpany
vs.
THE DAVENPORT AND S'T PAUL RAILROAD COM. and others.

Now comes William Dennison and shows to the court that he is the surviving trustee in a mortgage executed by the Davenport and S't Paul Railroad Company to John Edgar Thompson and William Dennison, dated 1st July, 1871, and said mortgage was duly recorded in Delaware County on the 7th day of February, 1872.

That the said Delaware Railroad Construction Company, on
555 [82] the 22nd day of May, 1874, recovered a judgment in this court against said Thomson and this defendant, in which proceedings they were not personally served with process, but the only mode in which said defendants were brought into court was by publication in a newspaper. And said John Edgar Thomson died on the 23d day of May, 1874, and thereupon the said Dennison now comes into court and tenders adequate security for costs in said cause and prays that the said trustee, W'm Dennison, survivor, may have a new trial in said cause.

GRANT & SMITH,
For W'm Dennison.

Filed January 26, 1875.

J. B. SATTERLEE, *Clerk.*

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION COMpany
vs.
THE DAVENPORT AND S'T PAUL RAILROAD COMpany and others.

I do hereby enter myself security for costs for W'm Dennison, who applies for a new trial in this cause, and acknowledge myself bound to pay all costs which may adjudged against said W'm Dennison by reason of the retrial of said cause or by reason of any order or judgment of the court in relation to costs therein, upon and after the order for a new trial.

JAMES THOMSON.

Filed January 26, 1875.

J. B. SATTERLEE, *Clerk.*

556 [83] In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION COMpany
vs.
THE DAVENPORT AND S'T PAUL RAILROAD COMpany and others.

The said defendant, William Dennison, now comes into court and denies each and every allegation of the plaintiff's petition.

And the said defendant, in bar of any recovery against this defendant as trustee of the bondholders, says, that on the first day of July, 1871, the said Davenport and S't Paul Railroad Company executed to *to* John Edgar Thompson and W'm Dennison a deed of trust, conveying to them all the railroad, railroad track, right of way, and all real and personal property then owned, or thereafter to be owned, by said company, to secure certain bonds therein named, of which over three millions of dollars has been issued, and are now owned by bona-fide holders, and were so owned when said judgment was recovered against this defendant on the 22nd day of May, 1874, and said mortgage was duly recorded in Delaware County on the 1st day of February, 1872.

And said Delaware Railroad Construction Company had constructive notice from that date, and actual notice on the day of its execution on the 1st day of July, 1871.

And this defendant says, that said Delaware Railroad Construction Company performed the work, furnished the materials, and makes the claim of lien against said company, and said trustees, by reason of a written contract set out in the petition, filed in said cause, to which agreement reference is hereby made.

557 [84] And by the said contract the said construction company agreed that the payment for the work done under said contract should be paid by the citizens of Delaware County, and at the time of said contract divers citizens of Delaware County had subscribed to the stock of said railroad company, and afterwards, to wit, on the first day of July, 1872, and after said mortgage to the said trustees had been recorded in Delaware County, the said construction (?) agreed with the Davenport and S't Paul Railroad Company, in consideration of the re-

duction of the price of the contract two thousand dollars, to waive its rights to have said contract paid for by the citizens of Delaware County, and to take the said Davenport and S't Paul Railroad Company as payer.

And by reason of said premises the said railroad, or any part thereof, or the right of way thereof in Delaware County, and is not entitled to any lien whatever against this defendant.

Wherefore he prays judgment.

GRANT & SMITH,
Att'ys for Dennison.

Filed Jan. 26th, 1875.

J. B. SATTERLEE,
Clerk.

And on the said second day of the said January term, 1875, of said court, to wit, on the 26th day of January, 1875, as aforesaid, the following proceedings were had, done, and entered, and appear of record in said cause in the proper records of said court, to wit:

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thompson, William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard.
} No. 1141. Equity.

558 [85] Now, on this 26th day of January, 1875, comes William Dennison, the surviving trustee for certain bondholders of the Davenport and S't Paul Railroad Company, who were defendants in the above-entitled cause, and files with the clerk of this court a motion for a new trial in this cause, on behalf of the said William Dennison, surviving trustee as aforesaid, and brings into court a bond for security for costs of retrial of said cause, as required by the statute in such cases made and provided, and offers to be filed the answer of the said surviving trustee, William Dennison. Whereupon it appearing to the court that the service upon the said surviving trustee was by publication only, and that he and those whom he represents are entitled to a new trial under the law, and it further appearing to the court that the said surviving trustee has furnished security for the costs of a new trial herein, satisfactory to the said plaintiff, it is ordered by the court that a new trial in this cause be granted to the said surviving trustee, William Dennison, that the answer offered by the said defendant be filed, and that this cause stand continued to the next term of this court.

And afterwards, during the further progress of said cause in said court, on the 2nd day of February, A. D. 1875, at the regular January term, A. D. 1875, of said court, and on the 8th day of the said term, there was filed in the office of the clerk of said court a motion, in words and figures following, to wit:

Motion to strike out answer of W'm Dennison, trustee.

In circuit court, Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
against
THE DAVENPORT AND S'T PAUL RAILROAD Company and others.

The said plaintiff comes and moves the court to strike out the answer of William Dennison, trustee, etc.

559 [86] The reason for this motion is that the answer of said William Dennison, trustee, etc., is not verified, although all previous pleadings in said suit are verified, and because of said defect in said answer said plaintiff moves this court to strike from the files of the court.

J. M. BRAXTON,
Att'y for Plaintiff.

Filed Feb. 2, 1875.

J. B. SATTERLEE,
Clerk.

And afterwards, during the further progress of said cause in said court, on the 1st day of the regular May term, A. D. 1875, of said court, to wit, on the 17th day of May, 1875, the following proceedings were had, done, and entered of record in the proper records of said court, to wit:

THE DELAWARE R. R. CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thomson and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard. — No. 1141. Equity.

Now, on this 17th day of May, A. D. 1875, this cause comes on for hearing, on motion of plaintiff, to strike William Dennison's answer from the files, and after hearing the arguments of the counsel, and the court being fully advised in the premises, it is ordered by the court that said answer be stricken from the files. Whereupon, plaintiff files a motion for default against said defendant, William Dennison, for want of answer herein. And afterwards, during the further progress of said cause in said court, on the 19th day of May, A. D. 1875, it being the 3d day of the regular May term, 1875, of said court, the following proceedings were had, done, and entered of record, in the proper record of said court, to wit:

560 [87] THE DELAWARE R. R. CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thomson, William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company and Lucius Howard. — No. 1141. Equity.

Now, on this 19th day of May, A. D. 1875, defendant William Den-

nison asks leave to file an amended answer, and leave is granted by the court to present an amended answer.

And further, on the said 19th day of May, A. D. 1875, it still being on the 3d day of the regular May term, 1875, of said court, the defendant William Dennison files in the office of the clerk of said court his amended answer, in words and figures following, that is to say:

Amended answer.

In the circuit court of Delaware Co., Iowa.

THE DELAWARE R. R. CONSTRUCTION COMPANY }
vs.
THE D. AND S'T P. R. R. CO. ET ALS. }

Said defendant William Dennison now comes into court, and for answer to the plaintiff's petition states:

That as to the work done and materials furnished by the pl'ff to the D. & S't P. R. R. Co., he has not knowledge nor information sufficient to form a belief, and requires strict proof thereof, and the said defendant in bar of any recovery against him as trustee for the bondholders of the D. & S't P. R. R. Co., says that on the first day of July, A. D. 1871, the said D. &. S't P. R. R. Co. executed a mortgage to or
561 [88] deed of trust to John Edgar Thomson and William Dennison, conveying to them all the railroad, right of way, and property of every description then owned, or thereafter to be owned by said company, to secure certain bonds therein named, of which over three millions of dollars have been issued, and are now owned by bona fide owners, and were so owned when said judgment was recovered against said defendant on the 22nd day of May, A. D. 1874, and said mortgage was duly recorded in the office of the recorder of Delaware County, on the 7th day of Feb., 1872; that said Delaware R. R. Const. Co. had constructive notice from that day and actual notice on the day of the execution of said mortgage, to wit, on the first day of July, 1871.

And this defendant says that said Delaware R. R. Const. Co. performed the work, furnished the materials, and makes the claim of lien against said company and said trustees by reason of a written contract set out in the petition filed in said cause, to which agreement reference is hereby made.

And by the said contract the said construction company agreed that the work done and materials furnished under said contract should be made by the citizens of Delaware County, and afterwards, to wit, on the first day of July, 1872, and after said mortgage to the said trustees had been recorded in Delaware County, the said D. & S't P. R. R. Co. agreed with the said Delaware R. R. Cons. Co., in consideration of the reduction of the price of the contract two thousand dollars, to waive its rights to have the work done under said contract to be paid for by the citizens of Delaware County, and to allow said Delaware R. R. Cons. Co. to look to the said D. &. S't P. R. R. Co. as the payer.

And by reason of said premises the said Delaware R. R. Construction Company is not entitled to any lien upon said R. R. or any part
562 [89] thereof, as against this defendant and the bondholders he represents. Wherefore he prays judgment.

WILLIAM DENNISON,
By GRANT & SMITH,
His Att'ys.

STATE OF IOWA,
Delaware County, ss:

I, L. M. Fisher, on oath say that I am acting as attorney for W'm Dennison, trustee for the bondholders in said cause, that I am acquainted with the facts upon which the foregoing answer is founded, and that the allegations therein made are true, as I verily believe.

L. M. FISHER.

Subscribed by L. M. Fisher and by him sworn to in my presence this 19 day of May, A. D. 1875.

[SEAL.] J. B. SATTERLEE,
Clerk Circuit Court.

Filed May 19th, 1875.

J. B. SATTERLEE, *Clerk.*

And afterwards, on the said 19th day of May, A. D. 1875, during the further progress of said cause in said court, it being on the third day of the regular May term, A. D. 1875, of said court, there was filed in the office of the clerk of said court a paper in the words and figures following, to wit :

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
W'M DENNISON, SURVIVING TRUSTEE.

Now comes Lewis H. Meyer, and moves to be substitued as a co-defendant in the above-entitled cause, and states to the court—

1. That on the 1 day of July, A. D. 1871, there was executed
563 [90] and delivered by the Davenport and S't Paul Railroad Company to W'm Dennison, a citizen and resident of the State of Ohio, and John Edgar Thomson, a resident and citizen of the State of Pennsylvania, a certain deed or indenture on the property, rights, and franchises of the said railroad company, for the purpose of securing certain bonds issued by said company.

2. That since the delivery and execution of said indenture, to wit, on the 22 day of May, A. D. 1874, John Edgar Thomson, one of the trustees of said mortgage, departed this life.

3. That on the same day aforesaid, to wit, on the 1st day of July, A. D. 1871, the said Davenport and S't Paul Railroad Company made, executed, and delivered to said John Edgar Thomson and W'm Dennison a certain other deed of trust, by way of supplement, which provides, among other things,

"That in case, any time hereafter, the said trustees, or either of them, or any trustee hereinafter appointed, shall die or resign, or be removed, as herein provided, a successor to such trustee shall be appointed by the holders of a majority in interest of the total amount of said bonds."

4. That in accordance with said supplemental indenture, and after the death of said John Edgar Thomson, by an instrument in writing, duly executed by a requisite number of such bondholders, your petitioner was, on the day of duly appointed a trustee of the mortgage or deed of trust heretofore mentioned, in place of John Edgar Thomson, deceased.

Wherefore your petitioner prays he may be substituted as a co-defendant in said suit.

LEWIS H. MEYER,
By GRANT & SMITH,
His Att'ys.

Filed May 19, 1875.

J. B. SATTERLEE, *Clerk.*

564 [91] And on the same day, to wit, on the 19th day of May, A. D. 1875, during the further progress of said cause in said court, and on the said 3rd day of the regular May term, 1875, of said court, a paper was filed with the clerk of said court, in the words and figures following, that is to say:

Pete. to transfer case to U. S. Cir. C.

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION CO.
vs.
LEWIS H. MEYER AND W'M DENNISON, TRUSTEES.

Now comes your petitioners, Lewis H. Meyer and W'm Dennison, trustees, and state:

That the Delaware Railroad Construction Company and all persons who have come in as intervenors in the above-entitled cause are citizens of the State of Iowa; that Lewis H. Meyer is a citizen of the State of New York, and *and* William Dennison, a citizen of the State of Ohio.

That they have reason to believe and do believe that from prejudice or local influence they will not be able to secure justice, by reason of such prejudice or local influence.

That said cause can be fully and finally determined in the United States circuit court for the district of Iowa.

That the amount in controversy in said cause amounts to more than the sum of five hundred dollars, exclusive of costs, and they make and file in this court a bond with good and sufficient security for their entering in such circuit court, on the first day of its next session, a copy of the records in said suit and for paying all costs that may be awarded by said circuit court, if said court shall hold that said
565 [92] suit shall be wrongfully or improperly transferred thereto, and also for the appearing and entering special bail in such suit, if special bail was originally requisite therein, and they pray of said court to accept said petition and bond, and order the transfer the said cause to the said circuit court of the United States.

Filed May 19th, 1875.

J. B. SATTERLEE, *Clerk.*

And afterwards, on the 20th day of May, A. D. 1875, during the further progress of said cause in said court, it being on the 4th day of the regular May term, A. D. 1875, of said court, there was filed in the office of the clerk of said court a paper, in the words and figures following, that is to say:

In the circuit court of Delaware County, I'a.

Know all men by these presents, that we, Lewis H. Meyer and W'm Dennison, principals, and John E. Henry and Charles Whittaker, as

sureties, are held and firmly bound unto the Delaware Railroad Construction Company, and all other persons whom it may concern, in the penal sum of one thousand dollars, to which payment we bind ourselves and each of us by these presents. Given under our hands this 15th day of May, 1875.

The conditions of this obligation are these: The said Lewis H. Meyer and W'm Dennison have applied to the circuit court of said county to remove a certain cause pending in said court, wherein the Delaware Railroad Construction Company are plaintiffs, and the said Lewis H. Meyer, trustee, successor to John Edgar Thomson and William Dennison, trustees, and many others, are defendants, from the said cir't court to the circuit court of the United States for the district of Iowa.

Now, if said Meyer & Dennison shall enter in the said circuit court of the United States for the district of Iowa, on the first day of
566 [93] next term thereof, a copy of the record of said suit, and shall pay all the costs that may accrue or be awarded by said circuit court, if it shall hold that said suit was wrongfully or improperly removed thereto, and shall also appear and enter special bail in said circuit court in said suit, if special bail was originally required therein, then this obligation shall be void; otherwise in full force.

W'M DENNISON & L. H. MEYER,
Trustees,
By GRANT SMITH, *Their Att'ys.*

C. WHITAKER.
JOHN E. HENRY,
Sureties.

Surety approved with this bond this day of May, A. D. 1875.

Judge of the Delaware Circuit Court.

I hereby certify that I am a resident and citizen of the State of Iowa, that I am worth double the amount herein intended to be secured, beyond the amount of my debts, and have property liable to execution equal to the sum herein secured.

C. WHITAKER.

Subscribed by and sworn to by said C. Whitaker, before me this 15th day of May, A. D. 1875.

[SEAL.] W. M. KAEISER,
Notary Public, Scott County, Iowa.

Filed May 20th, 1875.

J. B. SATTERLEE, *Clerk.*

And on the same day, to wit, on the 20th day of May, 1875, it being the 4th day of the regular May term, 1875, of said court, defendant, William Dennison, trustee, filed in the office of the clerk of said court his affidavit and motion for continuance, in words and figures following, viz:

567 [94] *Motion for Continuance.*

In circuit court, Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION COMPANY
vs.
THE DAVENPORT AND S'T PAUL RAILROAD COMPANY et al.

Now comes William Dennison, trustee, etc., one of the defendants in the above-entitled cause, and moves the court for a continuance in the

above-entitled cause, upon the within affidavit, and asks the court until the next term of said court to file his answer herein.

W'M DENNISON,
By GRANT & SMITH AND
L. M. FISHER, *His Att'ys.*

I, L. M. Fisher, on oath state that I am, as attorney for William Dennison, trustee for the bondholders of the Davenport and S't Paul Railroad Company, in the case of the Delaware R. R. Const. Co. vs. the said D. & S't P. R. Co.; that the failure to have the answer of the said Dennison in the said cause properly sworn to was an oversight upon the part of the attorneys of the said trustee and bondholders in said cause; that I have charge of said cause as to the said trustee in this court; that I was unable to be present upon the first day of this term, and to make the proper appearance and answer in said cause; that the said W'm Dennison, as trustee, has a good defense to the action of the Delaware R. R. Const. Co., in this, that the said Delaware R. R. Con. Co. had actual notice of a mortgage from and after the first day of July, 1871, which said mortgage was executed upon all the property of every description of the said D. & S't P. R. R. Co., which said mortgage was executed to John Edgar Thomson and William Dennison, and that all work done and materials furnished constitute only a subsequent and inferior lien
568 [95] after said date to the said mortgage. The said mortgage was recorded in the county of Delaware, on the 7th day of February, A. D. 1872, and that from said date said Delaware R. R. Const. Co. had constructive notice of said mortgoge, and that by far the larger portion of the said labor and materials alleged to have been furnished to the Davenport & S't P. R. R. Co. were furnished subsequent to the execution and recording of said mortgage, as aforesaid. That the said Delaware R. R. Const. Co. performed the work, furnished the materials, as makes the lien against said D. & S't R. R. Co., and said trustee, by reason of a written contract set out in the petition filed in said cause, and by said contract the said construction company agreed that the payment for the work done should be made by the citizens of Delaware County, and that at the time of said contract divers citizens of said Delaware County had subscribed to the capital stock of said D. & S't P. R. R. Co., and afterwards, to wit, on the 1st day of July, 1872, and after the recording of the said mortgage in Delaware County, the said Delaware R. R. Construction Company agreed with the Davenport & S't P. R. R. Co, in consideration of the reduction of the price of the contract of two thousand dollars, should have the work and materials furnished under said contract, paid for by the citizens of Delaware County, and to take the said D. & S't P. R. R. Co. as the payer. The said William Dennison, surviving trustee for the bondholders, resides in the city of Washington, and it would be impossible to communicate with *by* him by mail in less than one week from this date. That this application is not made for delay, but in the utmost good faith and for the purpose of furthering justice in said cause.

L. M. FISHER.

569 [96] STATE OF IOWA,
Delaware County, ss:

Subscribed and sworn to by the said L. M. Fisher in my presence, this 20th day of May, A. D. 1875.

[SEAL.]

J. B. SATTERLEE, *Clerk*,
By I. N. SULLIVAN, *Dep'ty.*

Filed May 20th, 1875.

J. B. SATTERLEE, *Clerk.*

And afterwards, on the same day, to wit, the 20th day of May, A. D. 1875, during the further progress of said cause in said court, and on the said 4th day of the regular May term, A. D. 1875, of said court, the following proceedings were had, done, and entered of record in the proper records of said court, to wit:

THE DELAWARE R. R. CONSTRUCTION COMpany
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company, & John Edgar Thomson, & William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard. } No. 1141. Equity.

Now on this 20th day of May, A. D. 1875, this cause coming on for hearing on the motion of plaintiff to strike from the files in this cause the amended answer of William Dennison, trustee, the same is submitted to the court upon arguments of counsel, and the court being fully advised in the premises, said motion is sustained. Whereupon defendants by their attorneys file a motion for a continuance of this cause, and asks for time to file an amended answer. Whereupon plaintiff files his objections to defendant's affidavit for continuance, alleging want of diligence on the part of said defendant, and that no excuse or reason for such want of diligence is shown. Objection to defend-
570 [97] ant's affidavit for continuance sustained, and motion for continuance overruled. Whereupon defendant, William Dennison, files his amended answer.

And on the same day, to wit, on the 20th day of May, 1875, it being still on the 4th day of the regular May term, 1875, of said court, defendant, William Dennison, files his amended answer in said cause, in words and figures following, viz:

STATE OF IOWA,
Delaware County, ss:

I, L. M. Fisher, being duly sworn, depose and say that I am one of the attorneys for W'm Dennison, trustee, e'c., and defendant in the above-entitled cause.

That I have examined the records upon which the foregoing allegations are made. That I am personally acquainted with the facts alleged in said answer.

The said allegations, except as to actual notice, are based upon written instruments, recorded in this, Delaware, County, and on file in this cause, which said instruments on file in this cause, and in the recorder's office of said county I have examined, and have personal knowledge of their contents.

All of which are true.

L. M. FISHER.

Subscribed and sworn to by said L. M. Fisher, before me, this 20th day of May, 1875.

[SEAL.]

J. B. SATTERLEE, *Clerk*,
By I. N. SULLIVAN, *Dep'ty.*

In the circuit court of Delaware Co., Iowa.

THE DELAWARE R. R. CONSTRUCTION CO.
vs.
THE D. & S'T P. R. R. CO. ET AL.

Said defendant, William Dennison, now comes into court, and for answer to the plaintiff's petition states:

571 [98] That the said defendant, in bar of any recovery against him, as trustee for the bondholders of the D. & S't P. R. R. Co., says that on the 1st day of July, A. D. 1871, the said D. & S't P. R. R. Co. executed a mortgage or deed of trust to one John Edgar Thomson and William Dennison, conveying to them all the railroad, right of way, and property of every description then owned or thereafter to be owned by said company, to secure certain bonds therein named, of which over three million dollars have been issued and are now held by bona-fide owners, and were so owned when said judgment against the defendant, the D. & S't P. R. R. Co., was recovered on the 22d day of May, A. D. 1874, and said mortgage was duly recorded in the office of the recorder of Delaware County on the 7th day of February, 1872.

That said Delaware R. R. Con. Co. had constructive notice from that day, and had actual notice thereof on the day of the execution of said mortgage, to wit, on the 1st day of July, A. D. 1871.

And this defendant says that the Delaware R. R. Const. Co. performed the work, furnished the material, and makes the claim of lien against said company and said trustee by reason of a written contract, set out in the petition filed in said cause, to which reference is hereby made.

And by the said contract, the said construction company agreed that the work done and materials furnished under said contract should be made by the citizens of Delaware County. And afterwards, to wit, on the first day of July, A. D. 1872, and after said mortgage to said trustee had been recorded in Delaware County, the said D. & S't P. R. R. Co. agreed with said Delaware R. R. Const. Co., in consideration of the reduction of the price of the contract two thousand dollars ($2,000), to waive its right to have the work done under said contract, to be paid for by the citizens of Delaware County, and to allow said Delaware

572 [99] R. R. Const. Co. to look to the said D. & S't P. R. R. Co. as the payee.

And by reason of said premises, the said Delaware R. R. Const. Co. is not entitled to any lien upon said R. R., or any part thereof, as against this defendant and the bondholders he represents.

Wherefore he prays judgment, with the costs of this suit.

WILLIAM DENNISON,
By GRANT & SMITH, AND
L. M. FISHER,
His Att'ys.

Filed May 20, 1875.

J. B. SATTERLEE, *Clk*,
By I. N. SULLIVAN, *Dep'ty.*

And afterwards, to wit, on the 21st day of May, A. D. 1875, during the further progress of said cause in said court, it being the 5th day the regular May term A. D. 1875, of said court, there was filed in the office of the clerk of the said court the following affidavit, in words and figures following, to wit:

In the circuit court of Delaware County, Iowa.

DELAWARE RAILROAD CONSTRUCTION CO.
vs.
THE DAVENPORT AND S'T PAUL RAILROAD COMPANY et al.

In the matter of the petition of Lewis H. Meyer.

I, L. M. Fisher, on oath say that I am an attorney for Lewis H. Meyer, trustee for the bondholders of the Davenport and S't Paul Railroad Company, that I know the facts upon which said peti-
573 [100] tion is based, and that the allegations therein made are true; that I have obtained this knowledge from the examination of the several mortgages of the D. and S't Paul Railroad Company in said petition mentioned, and also from an examination of certain correspondence of the said Meyer, wherein he alleged his appointment in the manner set forth in said petition; that the said Meyer is the duly appointed trustee of the Davenport and S't Paul Railroad Company's said mortgage, and as the successor of John Edgar Thompson, dec., has upon a proper showing been allowed to come in as a coplaintiff in the U. S. circuit court for the district of Iowa, in a case wherein Moses Dewett Loomis is plaintiff and the Davenport and S't Paul R. R. Company, among others, a defendant, which suit was brought for the foreclosure of the said mortgage; and that as such trustee said Meyer has filed a bill for the foreclosure of the aforesaid mortgage in said court.

And further, that the death of John Edgar Thomson is a matter of public notoriety, and well known to all persons acquainted with public affairs.

L. M. FISHER.

Sworn to and subscribed before me and in my presence this 21st day of May, 1875, by the said L. M. Fisher.

[SEAL.] J. B. SATTERLEE, *Clerk*,
By I. N. SULLIVAN, *Dep'ty.*

NOTE.—This affidavit was not certified by the clerk at the date purported, and was passed to the judge with the other papers in the cause without the clerk's certificate; but on the return of the papers with the decision of Judge Bagg, M'r Attorney Fisher claimed that he swore to said affidavit May 21st, 1875, before Deputy Clerk Sullivan, who, satisfied that such had been the case, at the request of said Fisher, certified as above.

Witness my hand and seal this 9th day of August, 1875.

[SEAL.] J. B. SATTERLEE, *Clerk.*

Filed May 21st, 1875.

J. B. SATTERLEE, *Clerk.*

574 [101] And afterwards, on the same day, to wit, on the 21st day of May, A. D. 1875, during the further progress of this cause in said court, and on the said 5th day of the regular May term, A. D. 1375, there was filed in the office of the clerk of said court a paper in words and figures following, that is to say:

Objections to transfer to .

In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION
against
THE DAVENPORT AND S'T PAUL RAILROAD CO. and others.

1. It is too late after one trial to remove the cause to the U. S. circuit court and after one term has passed at which the cause could be tried, after a second trial has been allowed.

2nd. The application is made by motion and not by petition.

3. The security is not good and sufficient security for the purpose of removal.

4. It is too late after the cause has been reached and the trial has commenced.

J. M. BRAYTON,
Att'y for Pl'ff.

Filed May 21 1875.

J. B. SATTERLEE, *Clerk.*

And afterwards, on the same day, to wit, on the 21st day of May, A. D. 1875, during the further progress of this cause in said court, and on the said 5th day of the regular May term, 1875, there was filed in the office of the clerk of said court, a paper in words and figures following, to wit:

575 [102] Delaware circuit court, May term, 1875.

THE DELAWARE R. R. CONSTRUCTION *Construction*
vs.
THE DAVENPORT AND S'T PAUL RAILWAY COMpany and others.

Now comes W'm Dennison and prays leave to amend his answer filed in this cause and to set up in bar of the recovery or judgment of the plaintiffs in this cause *amend* by stating the following facts:

1st. That a judgment was recovered in this cause in this court on the 6th of Feb., 1874, that said Thomson, deceased, and Dennison were named as defendants in said petition, and no judgment was rendered against them, nor were they served with process in any way.

2nd. That after said recovery of 6 Feb., 1874, an execution was issued against the defendants, served with process, the property sold, and execution returned satisfied prior to 22 May, 1874.

3. That after said judgment and said sale, and after said cause was tried and *and* (?) the said plaintiffs made a newspaper publication against Thomson and Dennison without any pleadings whatever, and on 22 May, 1874, took a judgment in this court, which barred their right to *to* redeem the property, on a judgment already rendered and sold on it, without any pleadings of any kind, and there was no petition before the court as against Thomson or Dennison on which any proceedings could be had or any judgment rendered, and the judgment against them on 22 May, 1874, on which a new trial is granted, is coram non judice, without any warrant of law, and utterly void and of no effect or valid

ity and this court could not then or now enforce it, and they pray it may be set aside.

GRANT & FISHER,
For Dennison.

576 [103] Sworn to and subscribed by James Grant, who swears that he is the attorney of the defendant and knows the facts in this amended answer to be true, by examining the records referred to.

JAMES GRANT.

Subscribed and sworn to before me and in my presence by the said James Grant, this 22 day of May, 1875.

J. B. SATTERLE,
Clerk Circuit Court.

Filed May 22d, 1875.

J. B. SATTERLEE, *Clerk.*

And on the same day, to wit, May 21st, A. D. 1875, and during the further progress of said cause in said court, and on the said 5th day of the regular May term, A. D. 1875, there was filed in the office of the clerk of said court a paper, in words and figures following, that is to say:

Reply.

In circuit court, Delaware County.

THE DELAWARE RAILROAD CONSTRUCTION Co.
against
THE DAVENPORT & S'T PAUL RAILROAD Company and others.

The plaintiff, for reply to the answer of William Dennison, trustee, denies that said Davenport and S't Paul Railroad Co. made, executed, and delivered any valid mortgage of said railroad property; denies that said plaintiff ever took the *the* citizens of Delaware County as payer or payees of their said contract.

Plaintiff denies that it agreed that the work and materials furnished under said contract should be made by the citizens of Delaware County. And plaintiff says that the mortgage recorded, as alleged in said answer was wholly void; that the authorized capital stock of said Davenport and S't Paul Railroad Company did not exceed the sum of three millions of dollars, and that the whole amount of

577 [104] capital stock of said railroad company subscribed was and is less than one million of dollars; that said railroad company was never authorized or empowered to execute a mortgage for the sum of three millions, or for any sum exceeding two millions of dollars.

Wherefore plaintiff asks that the original judgment in this case be confirmed, and for costs of suit.

J. M. BRAYTON,
Att'y for Plaintiff.

STATE OF IOWA,
Delaware County, ss:

I, Ancil E. Martin, being duly sworn, say that I have read the foregoing reply and know its contents. That I am secretary of plaintiff, and that the matters and things therein set forth are true, as I verily believe.

ANCIL E. MARTIN.

Subscribed and sworn to before me this 21st day of May, 1875.
Witness my hand and official seal the said date.
[SEAL.] J. B. SATTERLEE,
Clerk Circuit Court.

Filed May 21, 1875.

J. B. SATTERLEE, *Clerk.*

And afterwards, on the 22nd day of May, A. D. 1875, and during the further progress of said cause in said court, it being on the 6th day of the regular May term, A. D. 1875, of said court, there was filed in the office of the clerk of said court, a paper in words and figures following, that is to say:

In the circuit court of Delaware County, Iowa.—May term, 1875.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company and others.

578 [105] Now on this 22 day of May, 1875, comes Lewis H. Meyer, successor to John Edgar Thomson, and W'm Dennison, surviving trustee of the bondholders under the deed of trust or mortgage referred to in said cause, and show to the court that on January 26, 1875, said William Dennison gave security for costs and filed a petition in this court to retry this cause, and this court, at that term and time, ordered a retrial of this cause and judgment as to W'm Dennison, and allowed his answer to be filed, and on the day of the filing thereof, ordered a continuance of this cause.

And on the third day of this term, the said Dennison and Meyer filed a petition with a bond, with good and sufficient security, according to the act of Congress for the transfer of this cause to the circuit court of the United States for the district of Iowa, said Dennison being a citizen of Ohio and Meyer a citizen of New York. And this court having overruled said application to transfer said cause, and proceeding to the trial of the same, now said Dennison and Meyer, and each of them, protest against the trial of this cause, and ask of this court to accept said petition and bond, and proceed no farther with the trial of this cause, and if any objection is made in this court to the sufficiency of the security for the transfer, said Dennison and Meyer and each of them, offer to give any further and additional security in that respect, or to deposit with this court such sum of money as will be ample to answer all the costs and other duties required of them for the transfer of the same.

GRANT & FISHER,
For the said Dennison and Meyer.

I, James Grant, state on oath that I am one of the attorneys of the said Meyer and Dennison, and that I know the facts set forth in this motion by reading and examining the records and papers in the cause, and that I am authorized to give all the security for costs in
579 [106] this cause, and have the money in my possession to deposit the same with the court if required.

JAMES GRANT.

Subscribed and sworn to before me, and in my presence, by the said James Grant, this 22d day of May, 1875.

[SEAL.]

J. B. SATTERLEE,
Clerk Circuit Court.

Filed May 22, 1875.

J. B. SATTERLEE, *Clerk.*

Be it further remembered that afterwards, to wit, on the 31st day of May, A. D. 1875, in the vacation of said court, his honor S. Bagg, judge of said court, filed with the clerk of said court his written findings and judgment said cause, in words and figures following, to wit:

In the circuit court.

THE STATE OF IOWA,
Delaware County.

THE DELAWARE RAILROAD CONSTRUCTION Company
vs.
THE DAVENPORT & S'T PAUL RAILROAD Company and W'm Dennison, trustee for certain bondholders.

This action was tried as to the railroad company upon an appearance and hearing, and a judgment rendered for the sum of $. As to the defendant, William Dennison, trustee, a judgment was rendered by default, notice having been served by publication. At a subsequent term of said court the default was set aside as to Dennison, and a retrial ordered as to said trustee. After said setting aside of the default, the said cause was by consent continued. And now, at this May term of this court, on the first day thereof, the plaintiff moves that the answer of said defendant Dennison, be stricken from the docket for want
580 [107] of verification. Motion sustained and leave granted to file amended answer. Amended answer filed, and parties announce themselves ready for trial.

Whereupon the plaintiff offers in evidence the contract between the parties, after which defendant asked leave to file a motion and bond for change to U. S. circuit court.

Application denied, as the motion should have been made at the last term of the court, and the court having commenced the trial, it was too late. Defendant excepted to the ruling, whereupon the court proceeded to hear the cause, after which the def., by James Grant, his att'y, moved the court to discontinue further proceeding in the cause, and to transfer to U. S. circuit court, which was refused. Def't excepts.

Whereupon the court, upon hearing, find the equity of the case is with the plaintiff, and that the lien of said plaintiff is prior to the claim of defendants' trustee, and order that decree shall be entered up accordingly.

See decree.

S. BAGG,
Circuit Jud'g.

Filed May 21, 1875.

J. B. SATTERLEE, *Clerk.*

Whereupon the clerk of said court, in accordance with the findings

and judgment of his honor Judge Bagg, aforesaid, and the orders and proceedings before had in the trial of said cause, made and entered of record in the proper records of said court an entry of judgment and decree in said cause in words and figures following, to wit:

THE DELAWARE R. R. CONSTRUCTION COMPANY }
vs. }
THE DAVENPORT AND S'T PAUL RAILROAD Company, John Edgar Thomson, and William Dennison, trustees for certain bondholders of said railroad, the Davenport Railway Construction Company, and Lucius Howard. } No. 1141. Equity.

On this 21st day of May, A. D. 1875, this cause was called
581 [108] for hearing, when Lewis H. Meyer asks leave to be made a defendant in this case. No sufficient evidence of his appointment as trustee being produced, his application is overruled.

Plaintiff introduces in evidence the contract described in petition. Defendant asks leavs to file an amended petition and bond for removal to U. S. circuit court. Plaintiff objects that it is too late; should have been made before; and cause now reached and on trial. Objection sustained by the court.

Defendant excepts. Defendant offers bond on file.

Plaintiff files objection to application to transfer cause to U. S. circuit court. Shows that one surety on the bond is an attorney, and objects to him; and that the bond is not good or sufficient, and filed too late. Objection sustained.

Defendant asks for time to present a new bond. Plaintiff objects. Time refused by the court. Defendant excepts. With leave of court, plaintiff files a reply. Defendant objects and excepts to filing the reply. Court adjourns to May 22.

On this May 22, 1875, defendant files a motion that the court proceed no further with the cause, but allow defendant time to file a new bond or deposit security for costs. Motion overruled. Defendant excepts, and asks leave to file an amendment to his answer. Leave is granted, and the defendant William Dennison, trustee, files an amendment to his former answer. Trial proceeds upon the issue made, J. M. Brayton, esq., appearing for the plaintiff, and Grant and Fisher for William Dennison, trustee, etc. After both parties had introduced their evidence and rested, and the cause submitted, by consent of parties in open court, it is agreed that the court may take the case under advisement, and that upon the filing of his decision, although in vacation, judgment and decree shall be rendered and entered as of this May term of this court.

582 [109] And the court finds the issues in favor of plaintiff, and files and renders his decision that plaintiff's lien is paramount to that of defendants, and orders judgment in favor of said plaintiffs.

It is therefore ordered and adjudged and decreed that the lien of said plaintiff is paramount to that of the defendant William Dennison, trustee, e'c., and it is ordered, adjudged, and decreed that the former decree and judgment of this court, rendered at the May term, A. D. 1874, be confirmed, and that the plaintiff's claim for a mechanic's lien, as prayed in his petition, be established as against the said defendants, upon the property described in the decree in this suit, at the February term of this court, 1874, and as therein established against the Davenport and S't Paul Railroad Company, and that the defendants be forever

barred and foreclosed of and from all right of redemption of, in, or to said property, and every part thereof, and that the rights of plaintiff be declared to be superior and paramount to any and all claims and rights of said defendant to the same or any part thereof, and that the defendant William Dennison, trustee, e'c., pay the costs of the retrial of this suit. Thus decreed this 22 day of May, A. D. 1875.

And afterwards, on the 5th day of July, A. D. 1875, there was filed in the office of the clerk of said court a "notice of appeal," in words and figures following, to wit:

Circuit court of Delaware County, Iowa.

THE DELAWARE R. R. CONSTRUCTION COMPANY
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company and others. } No. 1141.

To the above-named plaintiff or J. M. Brayton, its attorney, and J. B. Satterlee, clerk of said court:

You are hereby notified that William Dennison, trustee, a
583 [110] defendant in said cause, has appealed from the judgment and decree of the said circuit court of Delaware County, rendered in favor of the said plaintiff on the 22 day of May, A. D. 1875, to the supreme court of the State of Iowa, and that said appeal will come on for hearing and trial at the regular term of said supreme court, to be held at Dubuque, Iowa, commencing on the third (3) Monday in October, A. D. 1875.

GRANT & SMITH AND L. M. FISHER,
Att'ys for said Def't.

Due and legal service of the within and foregoing notice accepted this 30 day of June, A. D. 1875.

J. B. SATTERLEE,
Clerk Circuit Court.

I hereby certify and return that the within notice came to hand for service June 30th, 1875, and that on the 3rd day of July, 1875, I served the same on J. M. Brayton, att'y for Delaware Railroad Construction Company, by delivering to him personally a true copy thereof, he at the same time waiving reading of this original. Done at Delhi, Delaware County, Iowa.

ABNER DUNHAM,
Sheriff Delaware County, Iowa.

Fees: Service, 50; copy, 20; mileage, 10—$.80.

Filed Jul. 5, 1875.

J. B. SATTERLEE, *Clerk.*

And afterwards, on the 21st day of July, 1875, there was filed in the office of the clerk of said court a stipulation or admission of facts in evidence in said cause, in words and figures following, to wit:

It is admitted by counsel for the plaintiff, in open court, that the first amendment to the articles of incorporation of the Davenport and S't Paul R. R. Company, changing the principal place of busi-
584 [111] ness from Delhi to Davenport, Iowa, was recorded with the

recorder of Scott County, Iowa, and with the secretary of state, prior to the execution of the mortgages to Dennison and Thompson, trustees.

And it is also admitted that the sixth amendment to said articles of incorporation, changing the amount of capital stock of said company, was recorded with the recorder of Scott County, Iowa, on the 2nd day of December, 1871, and with the secretary of state of Iowa on the 19th day of December, 1871, but no amendment to any of the articles of incorporation was recorded in the office of the recorder of Delaware County, Iowa.

J. M. BRAYTON,
For Pl'ff, The Del. Railroad Construction Co.

Filed Jul. 21, 1875.

J. B. SATTERLEE, *Clerk.*

And afterwards, to wit, on the 24th day of August, 1875, in the vacation of said court, there was filed in the office of the clerk of said court a paper, in words and figures following, that is to say:

STATE OF IOWA,
Delaware County, ss:

I hereby certify and return that the annexed motion came to hand for service on the 24th day of August, A. D. 1875, and that on the same day I served the same on J. M. Brayton, att'y for the Delaware Railroad Construction Company, by delivering to him personally a true copy thereof, he at the same time waived reading of the original. Done in Delhi Township, Delaware County, Iowa.

ABNER DUNHAM,
Sheriff Delaware County, Iowa.

Fees: Service, 50; mileage, 10; copy, 1.40—$2.00.

585 [112] In the circuit court of Delaware County, Iowa.

THE DELAWARE RAILROAD CONSTRUCTION Company
against
THE DAVENPORT & S'T PAUL RAILROAD Company and others.

Now comes William Dennison and moves the court for a correction of the record and decree in said cause and for a stay of judgment therein, and for cause thereof states:

That said judgment and decree do not state correctly the proceedings in said cause.

That on the calling of this cause, on the 21st day of May, 1875, the petition of Lewis H. Meyer, asking to be made a codefendant, was immediately brought to the attention of the court for its consideration. That as soon as the counsel for this defendant could be heard after the refusal of the court to grant the application made in said petition, the said defendant asked leave to amend his petition and bond for removal of cause to United States circuit court, so as to make said petition and bond comply with the said ruling of the court. That prior to this time and on the 19th day of May, 1875, the said petition and bond for the removal of said cause had been placed on file with the clerk of this court. That at the time of the refusal of the court to grant the application of Meyer

as aforesaid, and at the time of the offering by plaintiff of the contract in said decree named in evidence, the trial of this cause on its merits had not begun. That the defendant's petition and bond being on file were entitled to the consideration of the court previous to the trial of said cause on its merits. That at that time said contract could not be received in evidence. That the offering of the same at that
586 [113] time should not appear on the record. That the defendant, immediately upon the overruling of his application for leave to amend said petition and bond, called up for hearing his application upon the petition and bond then, then filed for a transfer of said cause to the United States circuit court. That upon the consideration by the court the said petition and bond, the said court held that the petition and bond had been filed too late. That said petition and bond should have been filed at the last term, and that the surety on said bond was not sufficient, and the bond was void, one of the sureties being an attorney at law. That the trial of said cause on its merits did not begin until the overruling of defendant's application for further time and leave to file new bond therein. That the facts aforesaid do not sufficiently appear by the said record and decree. That this correction herein asked for is material to the rights of this defendant and this motion is not made for delay.

And this defendant therefore moves the court to amend and correct the said decree, so that beginning with the application of *of* Lewis H. Meyer to be made codefendant in said cause, it may be read as follows, to wit:

"On the 21st day of May, 1875, this cause coming on to be heard, Lewis H. Meyer, through his attorneys, Grant & Smith and L. M. Fisher, called up for hearing his petition to be made a codefendant in said cause. The court then overruled the application therein made for want of sufficient evidence of the appointment of said Meyer as trustee, to which ruling defendant and Meyer excepted. Defendant then asks leave to amend his petition and bond for transfer of this cause to the United States circuit court. Pl'ff objects—application too late and cause now reached for trial; objection sustained and defendant excepts. Defendant then asks court to transfer this cause to the circuit court of the United States for the district of Iowa on the petition and bond already filed therein. Plaintiff excepts in writing, that application
587 [114] too late and bond insufficient, and that one surety is an attorney. Objection as to bond and surety sustained and application held too late. Defendant excepts to overruling application as too late, and asks leave to present new bond and further time for this purpose. Application refused and def. excepts."

And as to so much of the decree as follows the refusal of the application to file new bond defendant makes no exception. And the defendant further moves the court that judgment and proceedings be stayed in said cause until such correction as herein asked for of said record and decree may be made.

GRANT & SMITH AND L. M. FISHER,
Att'ys for Dennison & (?).

I, L. M. Fisher, on oath say that I was the attorney for William Dennison and Lewis H. Meyer, in the trial of the above-entitled cause as to said Dennison, that I know the allegations in the foregoing motion, and the same are true.

L. M. FISHER.

Subscribed and sworn to before me and in my presence this the 18th day of August, 1875, by the said L. M. Fisher.

[SEAL.] J. B. SATTERLY, *Clerk*,
By I. N. SULLIVAN, *Dep'ty.*

STATE OF IOWA,
Scott County, ss:

I, L. M. Fisher, being duly sworn, depose and say that I served the within motion on J. M. Brayton, attorney for the Delaware R. R. Construction Company, personally, by reading the said motion to him, and delivering him a copy thereof in the town of Delhi and State of Iowa, on the 18th day of August, 1875.

L. M. FISHER.

Subscribed and sworn to before me and in my presence by the said L. M. Fisher this 19th day of August, 1875.

[SEAL.] W. M. KAISER,
Notary Public, Scott Co., Iowa.

588 [115] Motion granted in this, that no execution issue on the judgment and decree entered in the cause until after hearing this motion to correct decree. If execution has been issued, clerk will recall the same. Time of hearing the motion, third day of the next term of court.

S. BAGG, *Judge.*

Aug. 21, 1875.

Filed Aug. 24, 1875.

J. B. SATTERLEE, *Clerk.*

Bill of costs.

G. B. Beveridge, clerk.

1874.				
Jan. 15.	To filing and docketing	$1 50	Rec't filed.	
" "	By J. M. Brayton	(receipt filed.)		$1 50
" "	To aff't on petition	25		
" "	To aff't	25		
" "	To aff't on reply	25		
" "	To order and continuance	70		
" "	To copies	50		
" "	To trial to court	1 50		
" "	To judgment and decree	1 50		
" "	To taxing costs and satisfaction	75		
Feb. 17.	To execution and return	1 00		
April 6.	To aff't on aff't for pub	25		
" 7.	To aff't on sup't petition	25		
" "	To certificate on sup't petition	25		
May 4.	By A. Dunham, sheriff, for clerk			6 40
" 5.	To aff't on aff't for pub	25		
" "	To trial to court	1 50		
" "	To decree	75		

J. B. Satterlee, clerk.

1875.		
Jan.	To 2 orders and bond for costs and costs	$1 25
May 3.	To copy for def't	40

"	3.	To 5 affidavits		1 25	
		" " To 8 orders		2 00	
589 [116]	May	2. To trial to court		1 50	
		" " To judgment and decree		1 50	
"	"	To 4 affidavits		1 00	
"	"	To taxing costs		50	
"	"	Satisfaction		25	
"	"	Copy decree for defendant		50	
"	"	Transcript, 375 fol		34 50	
"	"	Certificate to transcript		50	
"	"	Costs of transmission		75	
		By Grant & Smith			35 75
		For extra work on manuscript		3 70	

Sheriff's and other's fees.

1874.					
Jan.	26.	A. Dunham on notice		$1 30	
"	"	A. Dunham on pl'ff's sub		2 50	
"	28.	Henry Harger, referee		20 00	
Feb.	6.	J. M. Brayton, copies pet		15 00	Rec't filed.
"	"	J. M. Brayton, copies reply		80	Rec't filed.
May	4.	By sheriff's for Harger & Dunham			23 80
"	5.	J. B. Swinburne, pub. fee		16 85	
"	18.	Leonard & Giese, on notice		1 20	
"	"	A. Dunham on notice		2 00	
"	"	A. Dunham on sale paid by pl'ff		298 43	
1875.					
May	21.	Beveridge & Dunham on pl'ff's subpœna		1 35	
"	"	A. Dunham on def't's subpœna		50	
"	"	A. Dunham on def'ts subpœna		50	
"	"	A. Dunham on def't's subpœna		50	
July	3.	A. Dunham on notice of appeal		80	
1874.					
Jan.	7.	E. Baldwin, witness pl'ff 5-90		15 25	
"	"	Henry Harger, witness def't 3-1		3 85	
"	"	F. B. Doolittle, witness def't 5-1		6 35	Rec't filed.
"	"	G. B. Beveridge, witness def't 1		1 25	
"	"	A. E. Martin, witness def't 5-1		6 35	Rec't filed.
"	"	R. Eddy, witness def't 5-1		6 35	Rec't filed.
		" " C. F. Flemming, witness def't 5-1		6 35	Rec't filed.
590 [117]	Jan.	7. R. Boon, witness def't 5-4		6 65	Rec't filed.
		" " W. L. Richard, witness def't 7-46		13 35	
Feb.	14.	F. B. Doolittle, wit. for referee 3-1		3 85	Rec't filed.
"	"	A. E. Martin, witness for referee def't 3-1.		3 85	Rec't filed.
"	"	R. Eddy, wit. for referee def't 1-1		1 35	Rec't filed.
May	4.	By sheriff on ex. for witness not receipted			33 70
1875.					
May	7.	H. C. Jackson, witness def't 2-1		2 60	
"	"	A. E. Martin, witness def't 2-1		2 60	
"	"	F. B. Doolittle, witness def't 2-1		2 60	
"	"	Henry Harger, witness def't 1-1		1 35	

STATE OF IOWA,
Delaware County, ss:

I, J. B. Satterlee, clerk of the circuit court in and for said county, do hereby certify that the above and foregoing is a full, true, and complete transcript of all the entries of record in the action in which the same are entitled, and of the following pleadings and papers filed in said cause, to wit, the petition, amended petition, original notice, with the sheriff's return therewith, the answer of the Davenport and S't Paul R. R. Co., reply, report of referee (Henry Harger), affi. for publication (non-residence), supplemental petition, affidavit of publisher of original notice, with copy of notice attached, execution and return, original notice and return, motion for new trial as to William Dennison, trustee, security for costs of retrial as to William Dennison, trustee, answer of William Dennison, motion to strike answer of William Dennison, amended answer of William Dennison, application of Lewis H. Meyer to be made co-defendant, petition to transfer cause to the U. S. circuit court, bond to transfer cause to U. S. court, motion for continuance, amended answer of William Dennison, affidavit of L. M.
591 [118] Fisher as to Meyer being trustee, objection to transfer of cause, amendment to answer of William Dennison, affidavit of James Grant, findings of court, notice of appeal with the term of service, admission of plaintiff's attorneys, J. M. Brayton and Martin, for correction of record and stay of judgment, all as full and complete as the same remain on file and of record in my office, the same being all the matters required to be certified by the parties to said cause.

I further certify that the fee bill hereto attached and made a part of this record, as required by law, is full, true, and complete, as the same appears of record in my office. I further certify that the copies hereto attached, marked respectively Exhibits A, B, and C, are, Exhibit A, the transcribed copy of the minutes of the evidence in said cause, as certified thereon by the report of said court; Exhibit B is a full, true, and complete copy of the record of the articles of incorporation of the Davenport and S't Paul Railroad Company, with the amendments thereto introduced in evidence on the trial of said cause, as shown by a careful comparison of said copy with the certified record from the office of the secretary of state of Iowa; Exhibit C is a full, true, complete, and compared copy of the mortgage made by the Davenport and S't Paul R. R. Co. to William Dennison et al., trustee, as will further appear by the certificate of the recorder of said county, thereto attached, and that said Exhibits A, B, and C, with the contract attached by copy to the petition of plaintiff, includes all the evidence introduced on the trial of said cause, to the best of my knowledge.

And I further certify that the affidavit of L. M. Fisher, appearing above, filed in my office on the 21st day of May, 1875, as to the fact of Lewis H. Meyer being the successor of John Edgar Thomson as trustee, did not, when submitted to his honor Judge Bagg, at the close of the trial of said cause, appear sworn to, but was signed by said Fisher, that on the return of the papers, with the decision of Judge
592 [119] Bragg, Mr. Fisher claimed that he swore to said affidavit on the date of its filing before the deputy clerk, who, believing such to be the fact, from his own recollection certified to the affidavit, as it now appears of record, and I certify the facts in relation to the same in justice to all the parties in interest as to the judge who passed upon the said affi., not as it now appears, but as not appearing sworn to.

Given under my hand and the seal of said court hereto attached, this 26th day of August, 1875.

[SEAL.] J. B. SATTERLEE,
Clerk Circuit Court, Delaware County, Iowa.

EXHIBIT A.

STATE OF IOWA,
Delaware County, ss:

In circuit court, May term, 1875.

DELAWARE R. R. CONSTRUCTION CO.
vs.
D. & S't P. R. R. CO. ET AL.

Testimony taken on trial of the above-entitled cause.

Plaintiff offers contract in evidence.

Plaintiff rests.

H. C. JACKSON sworn on the part of defendant.

Direct examination:

1. Are you the recorder of Delaware County?
A. Yes, sir.
2. You have the records in your possession?
A. Yes, sir.
3. Have you in open court the record of the mortgage of the Davenport & S't Paul Railroad Company to William Dennison and John Edgar Thomson, trustees, the first mortgage?

593 [120] (Plaintiff objects on the ground that the mortgage is the best evidence. Objection overruled and plaintiff excepts.)

Defendant reads record in evidence book B, page 473 of the records of Delaware County, dated July 1st, 1871.

4. Was there another mortgage subsequent to this?
A. Yes, sir.
5. Show to the court the record of that?
A. That is the supplemental mortgage.
6. State whether at the time of the discharge of the first mortgage this second mortgage was not made. Wasn't it made at *at* the same time of the release of the first mortgage, wasn't the second mortgage?
A. I don't know. I have not looked up the date.
7. When was the first mortgage recorded?
A. The 25th of March, 1872.
8. No, that is the second mortgage.
A. The first mortgage was recorded the 7th of February, 1872.
6. When was it discharged?
A. The 24th of August, 1872.
10. When was the supplemental mortgage executed?
A. The 1st day of March, 1872.
11. When was it recorded?
A. The 25th of March, 1872.
12. When was that discharged?
A. The release on the mortgage [margin] refers to some other page of the record, and shows that the release discharges both mortgages August, 1872.

594 [121] 13. Was there any other mortgage executed subsequently to that.

A. There was another supplimental mortgage of the same date of the first mortgage.

14. When was that recorded?

A. The 28th of March, 1872.

15. Was that discharged?

A. It was.

16. When was that discharged?

A. The same time that release discharges these three mortgages. There was another mortgage the 1st of July, 1871.

17. When was that recorded?

A. The 4th of June, 1872, page 510, book B.

18. Was that ever released?

A. The record does not show a release.

F. B. DOOLITTLE sworn on the part of the defendant.

Direct examination:

1. Where do you live?

A. In Delhi, Iowa.

2. What position did you occupy in connection with the Delaware Railway Construction Company in 1870, 1871, and 1872?

A. I think I was treasurer at that time.

3. During what years did you hold that office, at the time of the entering of the Delaware Railway Construction Company into a contract with the Delaware Railway Company to build a road through Delaware County?

A. I think I did. If I was not then treasurer, I was soon after the contract was made.

595 [122] 4. Did you ever hear in 1871 anything about a mortgage executed by the Davenport & S't Paul Railroad Company?

A. I have heard talk about mortgages given by the company at different times and different mortgages, and if it is a fact that the mortgages were then executed, I presume I heard of it.

5. How early do you suppose you heard of it in the year 1871?

A. Well, I really can't tell, but probably the time it was exec'ted.

6. About July?

A. I don't know that even, but I know this fact, that whenever the mortgage was executed, I at the time or soon after had knowledge of it, because I was mixed up with the railroad but as to the nature of them or what they were, I perhaps didn't have the details.

7. Were subscriptions made to the stock of the Davenport & S't Paul R. R. Co. through this county?

A. Yes, sir.

8. Do you know how large an amount?

A. In the neighborhood of a hundred thousand dollars, I think. My recollection is in the neighborhood of a hundred thousand.

Cross-examination:

X. 1. What was it you said you heard about the mortgage?

A. I said that when the mortgages were executed I probably had some knowledge of it at the time or soon after, but I have no distinct, definite recollection of any particular mortgage or the details of any of the mortgages. My information was general information, obtained from general talk with the railroad company.

X. 2. Did you ever see the mortgage?

596 [123] A. I don't know that I ever did.

X. 3. To come right down to the matter, do you know that there was any mortgage executed, of your own personal knowledge, any way?

A. No; not of my own knowledge; only from general talk with the railroad men generally. I had a general information.

X. 4. You have it simply from general rumor?

A. Yes. I may have had actual knowledge. If I had I have forgotten. I don't think I had, however.

X. 5. It was rumored there was a mortgage?

A. Yes, sir.

X. 6. You never saw W'm Dennison, Edgar Thomson, or any of the mortgagees?

A. I have seen Edgar Thomson.

X. 7. Did you ever talk with him about this mortgage?

A. No, sir.

X. 8. Did he ever give you any notice of this mortgage?

A. No, sir.

Redirect ex.:

9. Was not this mortgage known by each of the other officers?

A. I don't know. I think it was a general rumor.

10. It was generally talked along the road?

A. I think it was.

11. And so with all these mortgages subsequent?

A. They were generally talked about.

Recross-ex.:

597 [124] X. 9. When did the plaintiff in this case, the Delaware Railroad Construction Company, when did they commence work?

A. They commenced work I think in September, 1870.

X. 10. Was it under that contract (showing witness a contract)?

A. Yes, sir; it was under this contract.

X. 11. Did they complete the work of grading and furnishing the road through this county with that company under that contract?

A. Yes, sir.

X. 12. Was it accepted by the railroad company?

A. It was.

X. 13. Do you remember when it was completed?

A. My recollection now is that it was in September or the early part of October, 1872. That is my present recollection. I could tell by dates to refresh my memory, but that is my recollection.

A. E. MARTIN sworn on the part of the defendant.

Direct ex.:

1. What is your name?

A. A. E. Martin.

2. Where do you live?

A. In Delhi, Delaware County.

3. What position did you occupy in connection with the Delaware Construction Company in the year 1870, 1871, and 1872, at any time during that time?

A. I think in 1870 I occupied no position in that company. In 1871 I was secretary.

4. What time in 1871 did you come into that office?

A. If my recollection serves me right our election was the last Satur-

day in the month of December, 1870, which I think was on the 26th day.

598 [125] 5. Did you hear anything about the mortgages executed by the D. & S't P. R. R. Co. in 1871?

A. Yes, sir; I think I did.

6. Tell us what you heard about it.

A. I think somebody told me that there had been such a thing issued; a mortgage placed upon the road.

7. Do you know how early in 1871?

A. No, sir; I couldn't tell you, and it might not have been until 1872 that I heard of it. I couldn't say positively as to that.

8. But you think it was in 1871?

A. Well, I can't say. It was in 1871 or 1872.

9. Were there any subscriptions made to the Delaware & S't Paul R. R. Co.?

A. Yes, sir.

11. What amount?

A. My impression is that it fell something short of a hundred thousand dollars, or it might have went over a hundred thousand dollars. My impression is about a hundred thousand dollars. I don't know whether it was over or below that?

12. Did you hear of other mortgages after the execution of this mortgage in 1871?

A. Well, my impression is now that I never have heard of but two mortgages.

13. When was the last one you heard of?

A. I can't tell that. I don't think I know anything about the last one until 1873. It might have been earlier than that, but I don't know.

Cross-examination:

X. 1. Do you know who you heard anything about that mortgage from?

599 [126] A. No, sir.

X. 2. Was it anything besides general rumor?

A. No, sir.

Redirect ex.:

14. These mortgages were generally talked about, weren't they?

A. Yes, sir.

Doolittle recalled on the part of plaintiff.

Direct ex.:

12. Do you remember when the iron was laid on the road in this county?

A. It was principally in the fall of 1872—summer and fall. It was principally in the year 1872, perhaps all; I wouldn't say positively.

13. Do you remember the time when they commenced laying the track from below Hopkinton up? Through the winter it was some distance below the village of Hopkinton. About how far in this county had it been laid at the commencement of 1872?

A. I think in February or March it was laid two or three miles.

14. How long after that before they commenced again laying iron?

A. I think they didn't commence until about harvest time, or perhaps after harvest, when they left off.

15. About what month?

A. I should say in the month of August.

Cross-ex.:

X. 14. When did you say that the iron was laid through Delaware County?

A. I think in February and March, 1872, it was laid from
600 [127] the southern line of the county up about three miles this way, and then there was no more laid, my recollection is, until August, 1872. It may have been the last of July, but I should think August.

X. 15. How far was it laid up to June?

A. About that three miles I spoke of. It was laid in February or March, 1872.

X. 16. How much was laid in April or May?

A. None.

X. 17. When again did you begin to lay iron?

A. I think it was in August they commenced afterwards. I know they continued and they reached here. My recollection is they reached here some time in September, and then continued right on through.

X. 18. In August, they were how far?

A. When they commenced in August they were about three miles in this county.

X. 19. And they had that laid in March, 1872?

A. Yes, sir.

X. 20. When did they reach the northern line?

A. I think it was some time in the fall. I don't remember just how late. I think they passed here the last of September, or some time in September were passed here. They finished late in the fall of 1872.

X. 21. How late in the fall?

A. I wouldn't pretend to give the date, but my recollection is, judging from the season, the weather, and the circumstances of finishing up and furnishing the ties, my recollection is, it got to be fall weather, say, in the last of October. It may have been the first of October when they passed out of this place; no, it couldn't have been that.

X. 22. How far had they laid the iron upon the first of September?

601 [128] A. Well, I can't tell you. It is possible they didn't commence down below Hopkinton until near the first of September.

X. 23. Your impression is they began before?

A. Yes, sir; the last of August or the first of August, or they may have commenced along the last of July and worked along and got up here towards the last of September, and then continued right along; but I think the iron was all laid in this county in 1872. That is my recollection.

HENRY HAGER sworn for def.

Direct examination:

1. What office did you hold in this county from the year 1870? Did you ever hold the office of recorder in this county?

A. Yes, sir.

2. State when.

A. From 1867 to 1875—the first of Jan'y, 1875.

3. What book is that you have in your hand?

A. This is the record of the articles of incorporation.

4. It contains the articles of incorporation filed in this county?

A. Yes, sir; up to 1868—August, 1868.

5. Does that contain a copy of the articles of incorporation of the Davenport and S't Paul R. R. Co?

A. It does.

(Plaintiff offers articles of incorporation in evidence.)

6. After these articles of incorporation, were there any other articles of incorporation or any change filed in your office whilst you was recorder?

A. I think not. My attention was called to it, I think, the last day I was in office, and I found none.

602 [129] Cross-examination:

X. 1. You state that is the record of articles of incorporation of the D. & S't P. R. R. Co.?

A. Yes, sir.

X. 2. Also of the articles of incorporation of the Delaware Construction Co.?

A. I think they are in the same book.

X. 3. When were the articles of the Delaware Railway Co. filed?

A. I couldn't tell without looking at them. I think some time in 1868.

X. 4. When were the articles of this Delaware Construction Company filed?

A. Some time after that. I couldn't tell without referring to the book.

DOOLITTLE recalled:

16. You are now a director in the Davenport and S't Paul R. R. Co.?

A. Yes, sir.

17. Do you know how much stock was subscribed to that company?

A. I can't tell.

18. Do you not know it to be less than a million dollars?

A. I do.

The trial of the case was here continued until Saturday morning, when the following further testimony was taken:

F. B. DOOLITTLE recalled by defendant.

Direct examination:

19. Are you a member, one of the original corporators of the Davenport and S't Paul R. R. Company?

603 [130] A. Yes, sir.

20. You are the person named in these articles of incorporation?

A. Well, I was one of the first incorporators.

21. You are that Doolittle?

A. Yes, sir.

22. Were you a director in that company?

A. I was.

23. At the time this contract was made with the Delaware R. R. Construction Company?

A. I think I was at that time. There was one year that I was not; but I think I was at that time.

24. Do you remember what year you was not?

A. No, I don't; but my recollection is that it was in 1872 that I was not.

25. Were you a director in 1870?

A. I think I was.

26. Were you in 1871?

A. I think not.

27. What office did you hold in connection with the company in 1871; with the railroad company?

A. I was assistant treasurer and right-of-way agent for this county.

28. What office did you hold in the Delaware Construction Company at that time in 1871?

A. I was treasurer of that company.

29. May I ask you if you collected the subscriptions for the stock of the Davenport & S't Paul R. R. Co. in this county or any part of it?

A. I did, sir.

30. What did you do with the proceeds of the subscriptions that you collected?

604 [131] A. I did various things with them. Paid for right of ways, paid the engineers and incidental expenses, and paid the Delaware Railway Construction Co.

31. You paid them?

A. Yes, sir.

32. Did you continue to pay to them until the change that was made in the contract in 1872?

A. Yes, sir, and after, I think.

Cross-ex.:

X. 24. You say you collected certain subscriptions; subscriptions for what?

A. Subscriptions for the stock of the Davenport and S't Paul R. R. Co.

X. 25. In what capacity did you collect these subscriptions; as what officer?

A. As assistant treasurer of the Davenport and S't Paul R. R. Co.

X. 26. Under whose direction did you collect them?

A. Under the direction of M'r Price and the executive committee. M'r Price was president of the road.

X. 27. Under whose direction did you disburse them?

A. Under his and the executive committee. M'r Price was the president of the road.

X. 28. The counsel mention a certain change of contract. State if at the time there was any change in the plan of the estimates of the road through this county from the time the contract was made up to the time that change was made, if there was any change made, and, if so, what?

A. I don't know that I understand you. Change in regard to work?

X. 29. I mean any change made in relation to the work by the railroad company.

605 [132] A. There was a change made after we took the contract, and after the work had commenced.

X. 30. What was that change?

A. Well, it was a change in the plan of building. The originals for building eight-foot banks and the cuts I don't recollect. They were very narrow, and it was changed from that, and the banks were made twelve feet and the cuts sixteen, perhaps, so it increased the amount of work very materially.

31. About what per cent. should you say this increase was in the plan?

A. I couldn't give an intelligent opinion hardly.

32. Was it at 1-10, 1-4, 1-5, 2-3, double or thribble? State as near as you can.

A. I would say it would add to the work ⅓, but it is without making any figures or investigating it.

Redirect:

33. Is this the contract you speak of, sir (showing witness contract)?

A. I think so.

34. Can you point anywhere on that contract where it is specified that the bank is to be eight feet?

A. No, sir. It was never put into the contract. I think not.

35. The work was to be done according to this contract?

A. Yes, sir; the engineers to give directions about that, but Price fixed upon the dimensions of the bank, and to change the cuts determined that the bank should be made eight feet, as the Maquoqeta branch was built; but it was afterwards concluded that they were too narrow; it would wash down and make the banks so narrow that it was not safe, and they were made wider.

606 [133] 36. When you speak of this change, you don't mean that there was any new contract made about it?

A. Oh, no.

37. That was done under this contract by the engineer, was it not?

A. Yes, sir.

38. You say you paid this money by the order of Price?

A. Yes, sir; and the executive committee of the D. & S't P. R. R. Co.

Defendant offers in evidence the articles of incorporation.

It is admitted by the parties to this suit that the first amendment to the articles of incorporation, changing their place of business, was recorded in the Scott County records, and not in the recorder's office in Delaware County.

The foregoing is a transcript of the testimony taken in the above-entitled case as made by me.

Dated July 17th, 1875.

E. V. HAYDEN.
Reporter Circuit Court 9th Jud'l Dist., Iowa.

EXHIBIT B.

Articles of incorporation of the Davenport and S't Paul Railroad Company, together with amendments.

ARTICLE I. The name of this corporation shall be the Davenport & S't Paul Railroad Company.

ARTICLE II. The elective officers of the corporation shall consist of a president, vice-president, and treasurer, and a board of directors, consisting of eleven members; and the president and vice-president shall be ex-officio members of said board, all of whom shall be elected

607 [134] on the 27th day of May, 1868, and shall hold their offices until the first annual election, and until their successors are elected and qualified. Seven members of the board shall constitute a quorum.

ARTICLE III. The regular annual meetings of the stockholders for the election of officers shall be held at the office of the company on Wednesday after the first Monday in January in each year.

ARTICLE IV. All of the elective officers, after the first election, shall be actual stockholders of the corporation.

ARTICLE V. The office and principal place of business of the company shall be at Delhi, Delaware County, Iowa. The board of directors may

at any time change the place of business by a two-thirds vote, and designate the location thereof.

ARTICLE VI. The general nature of the business of this corporation shall be the constructing and operating of a railroad, commencing at Davenport, Iowa, thence via Canton, Cascade, Sand Spring, Hopkinton, Delhi, Delaware, Strawberry Point, Brush Creek, and Fayette, to S't Paul, Minnesota.

ARTICLE VII. The capital stock of the corporation shall be three millions of dollars, with the privilege of increasing it to five millions, to be divided into shares of one hundred dollars each, to be subscribed for and paid in as hereinafter provided.

ARTICLE VIII. One per cent. of the subscription for stock shall be paid at the time of subscribing. The balance in installments, at the call of the directors, which shall not exceed four per cent., in thirty days after subscribing for the same, and five per cent. per month thereafter. The board of directors are authorized to take and accept of additional stock and subscriptions in money, real estate, or other property for the benefit of the company.

608 [135] ARTICLE IX. Any person owning one or more shares of stock as provided by article seven hereof, upon which there remains no unpaid assessment or installment then due, shall be entitled at all meetings of the stockholders to one vote for each share of such stock.

ARTICLE X. Certificates of stock shall be issued to all subscribers with an endorsement of the amount paid thereon. Such certificate shall only be assignable on the books of the company under such regulations as the board may adopt. If any installment of stock should not be paid within sixty days after it is due, the board may, at their discretion, declare such stock and the payments made thereon forfeited.

ARTICLE XI. The indebtedness or liability of the corporation shall in no case exceed two-thirds of the capital stock.

ARTICLE XII. The private property of the stockholders shall not be held liable for the debts of the corporation beyond the amount of the unpaid installments on the stock owned by them.

ARTICLE XIII. The time of the commencement of this corporation shall be on the twenty-seventh day of May, 1868, and continue for fifty years, with the privilege and right of renewal.

ARTICLE XIV. These articles may be altered or amended at any annual meeting of the corporation, but no alteration or amendment shall be made without previous notice thereof having been given by publication in some newspaper as convenient as practicable to the principal place of business of the company for four consecutive weeks previous thereto, which last publication shall be at least thirty days prior to the day of said meeting. The articles of incorporation may also be amended by the unanimous vote of all the directors.

609 [136] ARTICLE XV. The board of directors shall employ a suitable person to act as secretary of said company, to keep a correct and full account of all its affairs, which shall at all times be subject to the inspection of any stockholder. Said board are authorized to employ such other clerks, managers, and agents as they may deem essential to the good of the company, and the board may fill by appointment all vacancies in their body. The affairs of the company shall be conducted by the board of directors, and they are as a board hereby invested with all the powers and authority necessary to carry out the objects of this corporation as limited by these articles. The board of directors may also adopt such by-laws as they may deem to be

for the best interests of the corporation, not inconsistent with these articles.

ARTICLE XVI. The treasurer shall give bonds in a sum to be fixed by the board of directors, with security to be approved by them, conditioned for the faithful performance of his duties. The board of directors may at any time require additional bonds to be given by said treasurer.

ARTICLE XVII. All bonds for loans and certificates of stock shall be signed by the president and countersigned by the secretary.

ARTICLE XVIII. At all meetings of the stockholders a majority of all the stock subscribed upon which there are no unpaid assessments must be represented, directly or by proxy, before business affecting the company can be transacted.

ARTICLE XIX. Special meetings of the stockholders may be convened by the president by order of the board of directors, or whenever stockholders owning a majority of the stock of said company shall apply therefor by petition in writing, directed to the president through the secretary. The business of special meetings shall be confined to the objects specified in the notice calling the same.

610 [137] *Amendments to the articles of incorporation.*

ARTICLE I. Resolved by the board of directors of the Davenport & S't Paul Railroad Company, that the office and principal place of business of said company be changed from Delhi, Iowa, to Davenport, Iowa.

ARTICLE II. At a meeting of the board of directors of the Davenport & S't Paul Railroad Company, held at the office of the company, in Davenport, Iowa, on the 17th day of March, A. D. 1869, it was resolved by said board of directors by a unanimous vote: "That article six of the articles of incorporation of the Davenport & S't Paul Railroad Company be amended by striking out from said article six the words 'Canton,' 'Sand Spring,' and 'Brush Creek.'"

ARTICLE III. At a meeting of the board of directors of the Davenport & S't Paul Railroad Company, held at the office of the company, in Davenport, Iowa, on the 17th day of March, A. D. 1869, it was resolved by said board of directors, by a unanimous vote, that the following be adopted as a substitute for article two of the articles of incorporation of the Davenport & S't Paul Railroad Company, viz:

"The elective officers of the corporation shall consist of a president, vice-president, and treasurer, and board of directors, consisting of thirteen members. The president and vice-president shall be ex-officio members of the board. Said directors shall be elected by the stockholders at their annual election, and shall hold their offices for one year, and until their successors are elected and qualified. The board of directors shall upon their election immediately proceed to elect a president, vice-president, and treasurer, who shall also hold their offices for the term of one year, and until their successors are elected and qualified.

Nine members of the board shall constitute a quorum."

611 [138] ARTICLE IV. At a meeting of the board of directors of the Davenport & S't Paul Railroad Co., held at the office of the company, in Davenport, Iowa, on the 17th day of March, A. D. 1869, it was resolved by the said board of directors, by a unanimous vote, that article eight of the articles of incorporation of the Davenport & S't Paul Railroad Company be amended by adding thereto the following, viz: The board of directors are hereby authorized to take and accept of

stock upon other terms than those provided for in said article, and with such conditions as they may deem for the benefit of the company.

ARTICLE V. At a meeting of the board of directors of the Davenport & S't Paul Railroad Company, held at the office of said company, in the city of Davenport, on the 10th day of September, 1869, the following amendments to the articles of incorporation of said company were unanimously adopted, to wit:

"Resolved, That the articles of incorporation be so amended as to allow the president elected at this meeting to hold his office until the annual election of the stockholders in January, 1872, and to discharge the duties of treasurer until the further order of the board of directors."

"Resolved, That the articles of incorporation be so amended as to allow the directors now elected to hold their offices until the annual meeting of the stockholders in January, A. D. 1872."

ARTICLE VI. At the annual meeting of the stockholders of the Davenport & S't Paul Railroad Co., held at the office of the company, in Davenport, Iowa, on the 4th day of January, 1871, article VII of the articles of incorporation was amended by increasing the capital stock to nine millions of dollars.

Article X of said articles of incorporation was amended by striking out the word "shall" in the first line, and substituting therefor the word "may."

612 [139] ARTICLE VII. At a meeting of the board of directors held at the office of the company, at Davenport, on the 4th day of January, 1871, it was by unanimous vote—

Resolved, That article VI of the articles of incorporation be amended by striking out the words "Cascade," "Canton," and "Sand Springs."

Resolved, That the articles of association be amended so that the annual election of officers shall be held on the third Wednesday after the first Monday in January.

EXHIBIT C.

Trust deed.

The Davenport and S't P. R. R. Co. to John Edgar Thomson and William Dennison.

This indenture, made on the first day of July, in the year of our Lord one thousand eight hundred and seventy-one, between the Davenport and S't Paul Railroad Company, a corporation organized and formed by and under the laws of the State of Iowa, party of the first part, and John Edgar Thomson, of the city of Philadelphia, in the State of Pennsylvania, and William Dennison, of the city of Columbus, in the State of Ohio, party of the second part, witnesseth, that whereas the said party of the first part is authorized by law to borrow all such sum or sums of money as shall be necessary for the construction, equipment, and maintenence of its road, and to convey all its corporate property, franchises, and effects, by mortgages and deeds of trust, to secure the payment of all such indebtedness as shall be so contracted by it;

And whereas the said party of the first part has, by a resolution of its board of directors, duly authorized and empowered its president and secretary to execute, and in its corporate name to issue bonds,

613 [140] to be designated first-mortgage bonds, to be secured by a mortgage or deed of trust, in such form and with such covenants and conditions as the said president should deem most desirable

for the best interests of the said corporation, for the purpose of securing the necessary means to iron and equip its said railroad and a sinking fund of $40,000 per annum, to begin July 1st, 1875; the said bonds to be issued at a rate not to exceed the sum of $20,000 for each mile of the said railroad, upon which the work of grading, bridging, and tieing shall have been completed, and to be issued from time to time, as the and work shall progress;

And whereas the said resolution authorized the said president to designate the trustees, and John Edgar Thomson, of Pennsylvania, and William Dennison, of Ohio, having been designated by him as such trustees, to whom the said property of the said corporation should be conveyed to secure the payment of the principal and interest of the said bonds so to be issued; to incorporate in such mortgage or deed of trust as should be executed for the purpose aforesaid, such covenants and conditions as should be deemed by him necessary and proper to promote and sustain public confidence in the security of the said bonds and fix the rate of interest which the said bonds should bear;

And whereas the said president has determined to issue the said bonds in the sums of $1,000 each, payable at the agency of the said railroad company, in the city of New York, on the first day of July, in the year of our Lord one thousand nine hundred and eleven, bearing interest at the rate of seven per centum per annum, payable semi-annually in New York, London, or Frankfort, at suitable agencies, to be selected in said cities by said railroad company, and also make both the principal and interest of the said bonds payable in gold coin of the United States of America, of or equal to the present standard; and to have the said bonds duly prepared and deposited with the said parties of the second part, to be delivered over by them to the treasurer of the said company, on the order of the president, in an amount, from time to time, not to exceed the sum of $20,000 for each mile of said road upon which the work of grading, bridging, and tieing shall have been completed, which said bonds are in the form following, that is to say:

614 [141]

FORM OF BOND.

$1,000.] Whole issue $6,000,000. [No. .

UNITED STATES OF AMERICA.—STATE OF IOWA.

Seven per cent. first-mortgage sinking-fund bond.

The Davenport and S't Paul Railroad Company.

The Davenport and S't Paul Railroad Company, a corporation existing under and by authority of the laws of the State of Iowa, promises to pay to John Edgar Thomson, or bearer, on the first day of July, one thousand nine hundred and eleven, in the city of New York, one thousand dollars in United States gold coin, of or equal to the present standard, with interest thereon at 7 per cent. per annum, free of United States taxes, semi-annually, on the first days of January and July, in like gold coin, upon presentation and surrender of the annexed coupons therefor, such interest to be paid either in New York, London, or Frankfort, at suitable agencies to be hereafter named in each of those cities, at the option of the holders as specified in the coupons. In case of default in payment of such interest when due, and continuance of such

default for sixty days after demand, the principal of this bond will be subject to become due and payable, upon the condition provided in the trust deed hereinafter mentioned.

This bond is one of six thousand bonds for one thousand dollars each, of like tenor and date, numbered from one to six thousand, in-
615 [142] clusive, to be issued on the said railroad, at the rate of twenty thousand dollars per mile, as from time to time the road shall progress from the cityof Davenport, in the State of Iowa, to the city of S't Paul, in the State of Minnesota; it being expressly understood that said issue of bonds shall not exceed the amount named per mile, and shall only be issued as the road shall progress.

The owner of this bond shall have the right at any time to convert it into the stock of the company at par. The payment of this bond is secured by a mortgage or deed of trust of the company on its road-bed, depot grounds and buildings, rolling-stock, machinery, franchises, and all its property of every kind, as also net incomes acquired and to be acquired, to John Edgar Thomson, of Pennsylvania, and William Dennison, of Ohio, trustees, dated July 18th, 1871, and duly recorded in all the counties through which the road is being constructed. This bond is, moreover, secured by a sinking fund of $40,000 per annum, to begin July 1st, 1875, to be set apart and increased annually, for the redemption of the said bonds.

This bond is transferable by delivery, but it may be registered as to its ownership on a registry to be kept by the company.

After a registry of ownership, certified hereon by the transfer agent of the company, no transfer shall be valid unless made on the books of the company, except if the last transfer be to bearer, transferability by delivery shall be restored, subject to successive registration and transfer to bearer as aforesaid at the option of any lawful holder. This bond is further authenticated by the endorsement of said trustees hereon.

In witness whereof the said company has caused the foregoing to be attested, on its behalf, by the signature of its president
616 [143] and secretary, and its corporate seal to be affixed hereto, at Davenport, Iowa, this first day of July, A. D. 1871.

President.

Secretary.

Form of coupon.

£7. 5*s*. 10*d*. $35.00. Fl. 87. 30.

The Davenport and S't Paul Railroad Company will pay to the bearer, as he may elect, in the city of New York, thirty-five dollars, United States gold coin; or in London, seven pounds five shillings and ten pence sterling; or in Frankfort, O. M., eighty-seven florins and thirty krutzers, free of United States taxes, on the first day of January, 18 , being six months interest on bond No. .

Secretary.

Form of trustees' certificate.

The undersigned hereby certify that this bond is one of the series of bonds described in and secured by the within mentioned deed of trust or mortgage, bearing date the first day of July, A. D. 1871.

Trustees.

And to each of said bonds there is to be affixed the requisite United States internal revenue stamp. And, whereas, the said board of directors of the Davenport and S't Paul Railroad Company have formally passed and adopted a resolution authorizing the president and secretary of the said company to execute in its corporate name, and to affix thereto its corporate seal, a deed of trust to the said John Edgar
617 [144] Thomson and William Dennison to secure the payment of the principal and interest of the said bonds, as the same shall become due, according to the tenor and effect thereof. Now, therefore, this indenture witnesseth: That the said, the Davenport and S't Paul Railroad Company, for, and in consideration of the premises and of the sum of one dollar to this day paid by the said parties of the second part, the receipt whereof is hereby acknowledged, and for the purpose of securing the payment of the principal and interest of the said bonds, as the same shall become due and payable, according to the tenor and effect thereof, and of the said coupons thereto severally annexed, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, convey, release, and confirm unto the said parties of the second part, and to their successor or successors, as trustees, all and singular, the road-bed and superstructure of the said, the Davenport and S't Paul Railroad, including all branches, side-tracks, additions, turnouts, rights of way, depot grounds, coal lands, timber lands, and other lands, now owned and that may hereafter be acquired by said party of the first part; all depots, station-houses, engine-houses, car-houses, water-tanks, freight-houses, grain-houses, grain-elevators, wood-houses, coal-houses, car-shops, and machine-shops, and all other buildings whatsoever, now erected or hereafter to be erected. Also, all kinds of machinery and tools, now held and owned, or hereafter to be acquired by said party of the first part, for use in connection with the said railroad, including all locomotives, tenders, cars, or other rolling-stock or equipments and all tools, implements, fuel, and materials, of every kind, used, or procured for use in the constructing, operating, repairing, or replacing any part or parcel of the said railroad, or any part of its appurtenances; also, all property and franchises connected with or relating to the said railroad, or any part of its business, in anywise whatsoever, which are now held or may be hereafter in any way acquired by the said party of the first part; and also, all rights, claims, and benefits in or to any
618 [145] lease, contract, or agreement now made, or which may hereafter be made by the said first party, with any person or persons whomsoever.

Together with all and singular the tenements and appurtenances thereto belonging, or in anywise appertaining, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof—and also all the estate, right, title, and interest whatsoever, as well at law as in equity, of the said party of the first part, of, in, to, or out of the same, and every part and parcel thereof:

To have and to hold the premises above particularly described and set forth unto the said parties of the second part, and to their successor or successors, as trustee or trustees. In trust, nevertheless, for the uses and purposes hereinafter set forth and expressed, and upon the terms, covenants, agreements, and conditions following, that is to say:

First. The actual possession, occupation, and management, and the use and control of the said railroad, and of all the appurtenances thereof, shall be, remain, and lie with the said party of the first part, without molestation or interference by or from the parties of the second part, or their successor or successors in the said trust, until default be made in

the payment of the principal of the said bonds, or some of them, or until default be made in respect to something herein required to be done by the said party of the first part, and until such default be made as aforesaid the said party of the first part shall take and use all the earnings, incomes, profits, rents, tolls, and issues of the premises, and dispose of the same in any manner not inconsistent with the terms of the instrument.

Second. The bonds which shall be executed and issued by the said party of the first part, under the provisions of this instrument, and therein recited, shall be delivered to the said parties of the second part, to be countersigned by them as trustees hereunto, and no bond shall be valid or binding, or be benefited by the provisions hereof, unless the same shall be countersigned by the said parties of the
619 [146] second part, or their successors in the said trust, by signing their names in their own proper handwriting, respectively, to the certificate to each of the said bonds appended and made a part thereof, and the said parties of the second part shall not at any time countersign or permit to be issued any bonds in excess of the rate of twenty thousand dollars for each mile of the said road, upon which the work of grading, bridging, and tieing shall have been finished and completed.

Third. In case default shall be made in the payment of any of the interest coupons annexed to any of the foregoing bonds, according to the tenor thereof, and if such default shall continue for the period of six months, it shall be lawful for the party of the second part, by their duly authorized officer, agent, or attorney upon the request of the person or persons owning and holding one-fourth in amount of such delinquent interest-coupons, made known to the said parties of the second part in writing, signed by the person or persons therein interested, or by his or their lawfully constituted agents or attorney, to enter into and upon all and singular the premises hereby conveyed, and each and every part thereof, and to have, hold, and use the same, under such superintendent, manager, receiver, or agent as the parties of the second part may select to conduct the business of the said railroad and its branches, and to exercise the franchises pertaining thereto, and to make from time to time all repairs, replacements, additions, and improvements thereto as may seem judicious; and to collect all earnings, dues, freights, incomes, rents, tolls, issues, and profits of the same, and of every part thereof, and after deducting the necessary expenses of operating the said railroad and of conducting the business thereof, and of all the said repairs, replacements, additions, and improvements, and of all taxes, assessments, or liens upon the said premises, or any part thereof, as well as a just compensation for their or his own services, to apply the moneys arising, as aforesaid, to the payment of interest-coupons in
620 [147] the order in which they shall have respectively become due; and after paying all such past due coupons, and all installments or balances thereof, to apply the remainder of said moneys to the satisfaction of the principal of the aforesaid bonds, which may at that time be due and unpaid, rateably, and without discrimination or preference.

Fourth. In case default shall be made as aforesaid and shall continue as aforesaid, it shall also be lawful for the said parties of the second part, after entry as aforesaid, or without entry, on the request of the person or persons owning and holding the majority in amount of the said delinquency, expressed in writing to the said parties of the second part, to sell and dispose of the premises hereby conveyed at public auc-

tion, in the city of New York, or at such place as the parties of the second part may designate, having first given notice of the time and place of such sale by advertisement, published not less than once a week, for six months, in one or more newspapers published in each of the cities of New York and Davenport, and to adjourn the said sale from time to time, by announcement at the time and place advertised, without other notice, and to make and deliver unto the purchaser or purchasers thereof good and sufficient deeds, conveyance, or other assurance in the law, to vest in the said purchaser or purchasers of the said premises an absolute estate in the said premises in fee simple; which sale, so made as aforesaid, shall be a perpetual lien, both in law and in equity, against the said party of the first part, and all and every other person or persons claiming or to claim the same by, from, through, or under the said party of the first part; and after deducting from the proceeds of such sale, just allowance for all expenses thereof, including a reasonable amount for attorney's fees and any other necessary expense incurred by the said trustees in managing the business of the said railroad, while in possession, or in arranging the sale thereof, to apply the remaining
621 [148] proceeds to the payment of the principal of such of the aforesaid bonds as may be at that time unpaid, whether or not the same shall have previously become due, and the interest which shall at that time have accrued on the said principal, and be unpaid, without discrimination or preference, but rateably to the aggregate amount of such unpaid principal and such accrued and unpaid interest in United States gold coin at par; and if, after satisfaction thereof as aforesaid, a surplus of the said proceeds shall remain, to pay the same over to the party of the first part.

Fifth. At any sale of the aforesaid property, or any part thereof, whether made under the power herein granted or by judicial authority, the parties of the second part may bid for and purchase the property so sold, or any part thereof, for and on behalf of the holders of the bonds hereby secured, and then outstanding, in proportion to the respective interests of such bondholders.

Sixth. In cause default shall be made in the payment of any half-year's interest on any of the aforesaid bonds, according to the tenor and effect of the coupons thereto annexed, and if such default shall continue for the period of six months after such coupons shall have become due, and payment thereof shall have been demanded, then the principal of all the bonds secured hereby, if a majority in interest of all the holders of the said bonds shall so direct, in writing, before the interest so in arrears shall have been paid, shall be declared by the said parties of the second part to be immediately due and payable, and thereupon the same shall become due and payable, anything contained in the said bond or herein to the contrary notwithstanding.

Seventh. The said party of the first part shall from time to time, and as often as thereunto requested by the said trustees or their successor or successors in the said trust, execute, acknowledge, and deliver all such further deeds, conveyances, and assurances as shall be
622 [149] necessary for the better assuring unto the trustees aforesaid, or their successors, the said railroad and equipments, rights, and equities hereinbefore mentioned, or intended so to be, and all other property and things whatsoever, which may be hereafter acquired for use in connection with the same or any part thereof, and all franchises now held, or hereafter to be acquired, including the franchise to be a corporation.

Eighth. The said trustees and their successors shall have full power in

their discretion, upon the written request of the party of the first part, to convey, by way of release or otherwise, to the person or persons designated by the said party of the first part, any lands acquired or held for the purpose of stations, depots, shops or other buildings; and shall also have power to convey as aforesaid, on like request, any land or property which, in the judgment of the said trustees for the time being shall not be necessary for use in connection with the said railroad, or which may have been held for a supply of fuel, gravel, or other material, and also to convey as aforesaid, on like request, any land not occupied by the track, which may become disu'ed by reason of a change of the location of any station-house, depot, shop, or building connected with the said railroad, and such lands occupied by the track and adjacent to such station-house, depot, shop, or other building as the said party of the first part may deem it expedient to disuse or abandon, by reason of such change, and to consent to any such change, and to such other changes in the location of the track, or depots, or other buildings as in their judgment shall have become expedient; and to make and deliver the conveyances necessary to carry the same into effect; but any land which may be acquired for permanent use, in substitution for any so released, shall be conveyed to the said trustees upon the trusts of these presents; and the said trustees, for the time being, shall also have full power to allow the said party of the first part from time to
623 [150] time to dispose of, according to their discretion, such portions of the equipments, machinery, and implements at any time held or acquired for the use of the said railroad, as may have become unfit for use, replacing the same by new, which shall be conveyed to the said trustees, or otherwise made subject to the operation of these presents.

Ninth. It is hereby declared and agreed that it shall be the duty of the trustees aforesaid, and their successors, to exercise the power of entry hereby granted, or the power of sale hereby granted, or both, or to take the appropriate proceedings in equity, or at law, to enforce the rights of the holders of the said bonds, under these presents, upon the written request hereinbefore mentioned, when the person or persons making the same shall furnish to the said trustees a proper indemnification against the cost and expenses to be incurred by them therein.

Tenth. It is mutually understood and agreed by and between the parties hereto that the word trustees, as used and employed in these presents, shall be construed to mean the trustees for the time being; and whenever any vacancy occurs by the death, resignation, disability, or refusal to act of either of the said persons named herein as such trustees, or any of their successors in the said trust, at any time the board of directors, by a majority thereof, of the said The Davenport & S't Paul Railroad Company shall have the right to appoint a successor to fill such vacancy, such appointment to be attested in writing by the signatures of the president and secretary, and by the corporate seal of the said corporation, and the written acceptance of such appointment shall immediately and by force of such vote of the said board of directors and the said acceptance vest all authority, right, and power in such new trustee or trustees, as fully and completely, in all respects, as if he or they had been herein named as party or parties to the second part. But if at any time such vacancy should continue for a period of thirty days by reason of the neglect or refusal of the said
624 [151] board of directors to act in the premises, or for any good cause therefor shown, any court of competent jurisdiction within the State of Iowa, in any of the counties through which the said road may

run, shall have power to appoint such trustees, anything in the said bonds or in these presents to the contrary thereof notwithstanding. In all cases in which the trustees may be required to act, they are hereby invested with full powers of arbitrament and of compromise and of appointing agents and attorneys to act in their behalf.

Eleventh. The said party of the first part, in consideration of the premises, and of the said sum of one dollar duly paid as aforesaid, hereby further covenants and agrees to and with the said parties of the second part and their successor or successors in the said trust to have an office or agency in the city of New York for the payment of the principal, and an agency in each of the cities of New York, London, and Frankfort for the payment of the interest of the bonds hereby secured, as the same shall respectively become due and payable.

Twelfth. The said party of the first part, for the considerations aforesaid, hereby further covenants and agrees to and with the said parties of the second part and their successor or successors that the proceeds of the said bonds shall at all times be faithfully applied to the uses and purposes hereinbefore specified, and to no other use or purpose whatsoever.

Thirteenth. The said party of the first part agrees and covenants with the party of the second part and their successors that it will create a sinking-fund for the redemption of the whole amount of the bonds hereby secured, and will therefore set apart and deposit with a sinking-fund commissioner or commissioners, to be appointed by the party of the first part on the first day of July, 1875, the sum of $40,000, and will on the first day of July of each and every year
625 [152] thereafter deposit with said commissioner or commissioners the like sum of $40,000, such annual deposits to be continually invested and compounded with the interest thereof for the increase of the said sinking-fund until the maturity of said bonds; such sinking-fund moneys shall, from time to time, under the orders of the party of the first part, be invested in the purchase of the bonds hereby secured, or such other bonds as shall be designated by the party of the first part, with the consent of the said parties of the second part, and the money accruing on any and all of such investments for interest, as fast as the same shall be received, shall be added and paid into said sinking-fund, and compounded therein continually, and reinvested in like manner with the other monies of said fund, and the same shall be used solely to redeem and eventually pay off said bonds herein and hereby secured. That the board of directors of said railroad company, party of the first part, shall have entire control over the management of said sinking-fund, and every person in charge of or connected with the same, and shall from time to time direct in what bonds or security it shall be invested, and at what price or rates, and how it shall be kept, and the manner of keeping the accounts thereof; and shall require ample security to be given to them by any person in charge of its moneys, or its securities or bonds, for its safe-keeping.

Provided, that no securities shall be purchased for said fund other than the bonds secured hereby, without the consent of the parties of the second part, as aforesaid.

Fourteenth. And the said party of the first part, for the considerations aforesaid, hereby further covenants and agrees to and with the said parties of the second part that it, the said party of the first part, shall and will, at all times hereafter, observe, perform, and keep all and every the conditions, covenants, and provisions herein contained, to be, by the said party of the first part, performed and kept.

626 [153] Fifteenth. If the party of the first part shall well and truly pay the sums of money herein required to be paid by said party, and all interest thereon, and at the times and in the manner hereinbefore specified, and shall well and truly keep and perform all the things herein required to be kept and performed by the said party of the first part, according to the true intent and meaning of these presents, then and in that case the estate, right, title, and interest of the said parties of the second part, and of their successors in the trust hereby created, shall cease, determine, and become absolutely void, otherwise to be and remain in full force and virtue.

Sixteenth. It is mutually agreed by and between the parties hereto, as a condition on which the parties of the second part have assented to these presents, that said trustees shall be responsible for gross negligence or wilful default only; that they shall not be in any manner responsible for any default or misconduct of each other; that they shall not be held obliged by the terms of this instrument to demand and take actual possession of and operate the road and premises hereby granted and demised except at their own option; that said trustees or their successors in office shall not be required to act in the execution of any of the other trusts hereby created, unless the parties requesting their action shall give them sufficient indemnity against the charges and expenses to be incurred; that the said trustees or trustee shall be entitled to receive a reasonable allowance for any service which may be rendered by them or him in the execution and enforcement of the trusts hereby created, and for all expenses, counsel fees, and other necessary charges to which they or he may be subject; that either of said trustees may resign and discharge himself of the trust created by these presents, by notice in writing to the party of the first part three months before such resignation shall take effect, or such shorter time as they may accept as adequate notice.

[154] In testimony whereof the said party of the first part has caused its corporate seal to be hereto affixed, and these presents to be attested by the signatures of its president and secretary; and the parties of the second part, to testify their acceptance of the said trusts, have hereunto subscribed their names on the day and year first hereinbefore written.

[SEAL.] H. PRICE, *President.*
W. H. PRICE, *Secretary.*

J. EDGAR THOMSON, [SEAL.]
W. DENNISON, [SEAL.]
Trustees.

Witnesses:
HENRY C. SPACKMAN,
WM. M. SPACKMAN,
P. W. HUNTINGTON,
E. C. SMITH.

STATE OF IOWA,
County of Scott, ss:

Be it remembered that on this first day of July, in the year of our Lord one thousand eight hundred and seventy-one, before me, a notary public in and for the county and State aforesaid, personally came Hiram Price, president, and William H. Price, secretary of the Davenport and S't Paul Railroad Company, to me known to be the identical persons described in and who executed the within and foregoing in-

strument, and severally acknowledged that they executed the same as and for their voluntary act and deed, in their respective capacities as president and secretary of the said The Davenport and S't Paul Railroad Company, and as and for the act and deed of the said corporation; and, furthermore, they did severally acknowledge and declare that the seal attached to said instrument is and was, at the date thereof, the corporate seal of the said corporation, and was so affixed to the said instrument by order of the board of directors of the said company, and that, by like authority, they have executed the same as and for the act and deed of the said company.

627 [155] Given under my hand and seal notarial, at the city of Davenport, in the county and State aforesaid, on the day and year above written.

[SEAL.] ALFRED SULLY,
Notary Public, Scott Co., Iowa.

THE STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

Before me, the undersigned, a notary public of the State of Pennsylvania, duly commissioned and qualified, personally came the above-named John Edgar Thomson, trustee, and one of the parties of the second part in the foregoing mortgage and deed of trust, and personally known to me as the person who signed the same as such, and acknowledged that he did sign, seal, and execute the same for the uses and purposes therein mentioned. In testimony whereof I have hereunto set my hand and affixed my notarial seal this sixth day of July, A. D. 1871.

[SEAL.] HENRY C. SPACKMAN,
Notary Public.

STATE OF OHIO,
Franklin County, ss:

Before me, the undersigned, a notary public of the State of Ohio, personally came the above-named William Dennison, trustee, and one of the parties of the second part in the foregoing mortgage and deed of trust, and personally known to me as the person who signed the same as such, and acknowledged that he did sign, seal, and execute the same for the uses and purposes therein mentioned. In testimony whereof I have hereunto set my hand and affixed my notarial seal this first day of July, anno Domini 1871.

[SEAL.] T. J. JANNEY,
Notary Public in and for Franklin Co., O.

628 [156] Filed for record the 2d day of February, 1872, at 3¼ o'clock p. m.

HENRY HARGER, *Recorder.*

STATE OF IOWA,
Delaware County, ss:

This instrument was filed for record this 7th day of February, 1872, at 3.15 o'clock p. m., and recorded in book B of mortgages of town lots, on pages 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, and 485.

HENRY HARGER, *Recorder.*

Mortgage.—D. & S't Paul R. R. Co. to John Edgar Thomson et al.

This indenture, made on the first day of July in the year of our Lord

one thousand eight hundred and seventy-one, between the Davenport and S't Paul Railroad Company, a corporation organized and formed by and under the laws of the State of Iowa, party of the first part, and John Elgar Thomson, of the city of Philadelphia, in the State of Pennsylvania, and William Dennison, of the city of Columbus, in the State of Ohio, parties of the second part, witnesseth: That whereas the said party of the first part is authorized by law to borrow all such sum or sums of money as shall be necessary for the construction, equipment, and maintenance of its road, and to convey all its corporate property, franchises, and effects, by mortgages and deeds of trust, to secure payment of all such indebtedness as shall be so contracted by it.

And whereas the said party of the first part has, by a resolution of its board of directors, duly authorized and empowered its president and secretary to execute and in its corporate name to issue bonds to be designated first-mortgage bonds, to be secured by a mortgage or
629 [157] deed of trust in such form and with such covenants and conditions as the said president should deem most desirable for the best interests of the said corporation, for the purpose of securing the necessary means to iron and equip its said railroad, and a sinking-fund of $40,000 per annum, to begin July 1st, 1875; the said bonds to be issued at a rate not to exceed the sum of $20,000 for each mile of the said railroad upon which the work of grading, bridging, and tieing shall have been completed, and to be issued from time to time, as the said work shall progress.

And whereas the said resolution authorized the said president to designate the trustees; and John Edgar Thomson, of Pennsylvania, and William Dennison, of Ohio, having been designated by him as such trustees, to whom the said property of the said corporation should be conveyed to secure the payment of the principal and interest of the said bonds so to be issued; to incorporate in such mortgage or deed of trust as should be executed for the purpose aforesaid such covenants and conditions as should be deemed by him necessary and proper to promote and sustain public confidence in the security of the said bonds, and fix the rate of interest which the said bonds should bear;

And whereas the said president has determined to issue the said bonds in the said sums of $1,000 each, payable at the agency of the said railroad company, in the city of New York, on the first day of July, in the year of our Lord one thousand nine hundred and eleven, bearing interest at the rate of seven per centum per annum, payable semi-annually in New York, London, or Frankfort, at suitable agencies, to be selected in said cities by said railroad company, and also make both the principal and interest of the said bonds payable in gold coin of the United States of America, of or equal to the present standard; and to have the said bonds duly prepared and deposited with the
630 [158] said parties of the second part, to be delivered over by them to the treasurer of the said company, on the order of the president, in an amount from time to time not to exceed the sum of $20,000 for each mile of the said road upon which the work of grading, bridging, and tieing shall have been completed, which said bonds are in the form following, that is to say:

FORM OF BOND.

$1 00.] Whole issue $6,000,000. [No. .

UNITED STATES OF AMERICA, STATE OF IOWA.

Seven per cent. first mortgage sinking fund bond.

The Davenport and S't Paul Railroad Company.

The Davenport and S't Paul Railroad Company, a corporation existing under and by authority of the laws of the State of Iowa, promises to pay to John Edgar Thomson, or bearer, on the first day of July, one thousand nine hundred and eleven, in the city of New York, one thousand dollars in United States gold coin, of or equal to the present standard, with interest thereon at 7 per cent. per annum, free of United States taxes, semi-annually, on the first days of January and July, in like gold coin, upon presentation and surrender of the annexed coupons therefor, such interest to be paid either in New York, London, or Frankfort, at suitable agencies to be hereafter named in each of those cities, at the option of the holders, as specified in the coupons. In case of default in payment of such interest when due, and continuance of such default for sixty days after demand, the principal of this bond will be subject to become due and payable, upon the condition provided in the trust deed hereinafter mentioned.

This bond is one of six thousand bonds for one thousand dollars each, of like tenor and date, numbered from one to six thousand inclusive, to be issued on the said railroad, at the rate of twenty thou-
630 [159] sand dollars per mile, as from time to time the road shall progress from the city of Davenport, in the State of Iowa, to the city of S't Paul, in the State of Minnesota; it being expressly understood that said issue of bonds shall not exceed the amount named per mile, and shall only be issued as the road shall progress.

The owner of this bond shall have the right at any time to convert it into the stock of the company at par. The payment of this bond is secured by a mortgage or deed of trust of the company on its road-bed, depot grounds and buildings, rolling-stock, machinery, franchises, and all its property of every kind, as also net incomes acquired and to be acquired to John Edgar Thomson, of Pennsylvania, and William Dennison, of Ohio, trustees, dated July 1st, 1871, and duly recorded in all the counties through which the road is being constructed. This bond is, moreover, secured by a sinking fund of $40,000 per annum, to begin July 1st, 1875, to be set apart and increased annually, for the redemption of the said bonds.

This bond is transferable by delivery, but it may be registered as to its ownership on a registry to be kept by the company.

After a registry of ownership, certified hereon by the transfer agent of the company, no transfer shall be valid unless made on the books of the company, except, if the last transfer be to bearer, transferability by delivery shall be restored, subject to successive registration and transfers to bearer as aforesaid, at the option of any lawful holder. This bond is further authenticated by the endorsement of said trustees hereon.

In witness whereof the said company has caused the foregoing to be attested, on its behalf, by the signature of its president and secretary,

632 [160] and its corporate seal to be affixed hereto, at Davenport, Iowa, this first day of July, A. D. 1871.

President.

Secretary.

Form of coupon.

£7 5*s*. 10*d*. $35.00. Fl. 87. 30.

The Davenport and S't Paul Railroad Company will pay to the bearer, as he may elect, in the city of New York, thirty-five dollars, United States gold coin; or in London, seven pounds five shillings and ten pence sterling; or in Frankfort, O. M., eighty seven florins and thirty krutzers, free of United States taxes, on the first day of January, 18—, being six months' interest on bond No. .

Secretary.

Form of trustees' certificate.

The undersigned hereby certify that this bond is one of the series of bonds described in and secured by the within mentioned deed of trust or mortgage, bearing date the first day of July, A. D. 1871.

Trustees.

And to each of the said bonds there is to be affixed the requisite United States internal-revenue stamp. And whereas the said board of directors of the Davenport and S't Paul Railroad Company have formally passed and adopted a resolution authorizing the president and secretary of the said company to execute in its corporate name, and to affix thereto its corporate seal, a deed of trust to the said John
633 [161] Edgar Thomson and William Dennison to secure the payment of the principal and interest of the said bonds as the same shall become due, according to the tenor and effect thereof.

Now, therefore, this indenture witnesseth:

That the said The Davenport and S't Paul Railroad Company, for and in consideration of the premises and of the sum of one dollar paid to it, this day paid, by the said parties of the second part, the receipt whereof is hereby acknowledged, and for the purpose of securing the payment of the principal and interest of the said bonds, as the same shall become due and payable, according to the tenor and effect thereof, and of the said coupons thereto severally annexed, hath granted, bargained, and sold, and by these presents doth grant, bargain and sell, convey, release, and confirm unto the said parties of the second part, and to their successor or successors, as trustees, all and singular the road, bridges, and superstructure of the said The Davenport and S't Paul Railroad, including all branches, side tracks, additions, turnouts, rights of way, depot grounds, coal lands, timber lands, and other lands, now owned and that hereafter may be acquired by said party of the first part, all depots, station-houses, grain-houses, engine-houses, car-houses, water tanks, freight-houses, grain elevators, wood-houses, coal-houses, car-shops and machine-shops, and all other buildings whatsoever now erected or hereafter to be erected.

Also, all kinds of machinery and tools now held and owned or hereafter to be acquired by said party of the first part, for use in connection with the said railroad, including all locomotives, tenders, cars, or other rolling stock or equipment, and all tools, implements, fuel, and materials, of every kind, used, or procured for use, in the constructing, operating, repairing, or replacing any part or parcel of the said railroad, or any part of its appurtenances; also, all property and franchises connected with or relating to the said railroad, or any part of its business, in any wise whatsoever, which are now held or may be hereafter in any way acquired by the said party of the first part; and, also, all rights, claims, and benefits in or to any lease, contract or agreement,
634 [162] now made or which may be hereafter made by the said first party, with any person or persons whomsoever.

Together with all and singular the tenements and appurtenances thereto belonging or in any wise appertaining, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereto, and also all the estate, right, title, and interest whatsoever, as well at law as in equity, of the said party of the first part, of, in, to, or out of the same, and every part and parcel thereof.

To have and to hold the premises above particularly described and set forth with the said parties of the second part, and to their successor or successors, as trustee or trustees. In trust, nevertheless, for the uses and purposes hereinafter set forth and expressed, and upon the terms, covenants, agreements, and conditions following, that is to say:

First. The actual possession, occupation, and management, and the use and control of the said railroad, and of all the appurtenances thereof, shall be, remain, and lie with the said party of the first part, without molestation or interference by or from the parties of the second part, or their successor or successors in the said trust, until default be made in the payment of the principal of the said bonds, or some of them, or until default be made in respect to something herein required to be done by the said party of the first part; and until such default be made as aforesaid, the said party of the first part shall take and use all the earnings, incomes, profits, rents, tolls, and issues of the premises, and dispose of the same in any manner not inconsistent with the terms of this instrument.

Second. The bonds which shall be executed and issued by the said party of the first part, under the provisions of this instrument, and therein recited, shall be delivered to said trustees to be certified by them as trustees, said certificate to be signed in the proper handwriting of at least one of the said trustees, and no bond shall be valid or
635 [163] binding, or be benefited by the provisions hereof, unless the same shall be certified by the said trustees in form aforesaid; and the said trustees shall not at any time certify or allow to be issued any bonds in excess of the rate of twenty thousand dollars for each mile of the said road upon which the work of grading, bridging and tieing shall have been finished and completed.

And the said parties do hereby further mutually grant, covenant, promise, and agree to and with each other that although by reason of the terms and limitations in these presents expressed, it shall be unlawful for the trustees to certify any part of the issue of bonds herein provided for; nevertheless, upon deposit of the purchase money thereof by the purchaser, as hereinafter provided, the bonds so purchased shall be certified by the trustees and issued to such purchaser.

Provided always that the purchase money therefor shall be deposited to the credit of the trustees in some banking house in the city of New

York or Philadelphia, to be named by both the purchasers and the trustees, which said purchase money shall be used only in payment for iron and equipment of said railroad, at a rate not to exceed the sum of twenty thousand dollars for each mile of the said railroad upon which the work of grading, bridging, and tieing shall have been completed, and be paid from time to time, as the said work shall progress, upon written direction of the trustees.

Third. In case default shall be made in the payment of any of the interest coupons annexed to any of the foregoing bonds, according to the tenor thereof, and if such default shall continue for the period of six months, it shall be lawful for the parties of the second part, by their duly authorized officer, agent or attorney, upon the request of the person or persons owning and holding one fourth in amount of such delinquent interest coupons, made known to the said parties of the second part in writing, signed by the person or persons therein interested, or by his or their lawfully constituted agents or attorney, to enter into and upon all and singular the premises hereby conveyed, and
636 [164] each and every part thereof, and to have, hold and use the same, under such superintendent, manager, receiver, or agent as the parties of the second part may select to conduct the business of the said railroad and its branches, and to exercise the franchises pertaining thereto, and to make from time to time all repairs, replacements, additions, and improvements thereto, as may seem judicious; and to collect all earnings, dues, freights, incomes, rents, tolls, issues and profits of the same, and of every part thereof, and after deducting the necessary expenses of operating the said railroad, and of conducting the business thereof, and of all the said repairs, replacements, additions, and improvements, and of all taxes, assessments, or liens upon the said premises, or any part thereof, as well as a just compensation for their or his own services, to apply the moneys arising, as aforesaid, to the payment of interest coupons in the order in which they shall have respectively become due; and after paying all such past due coupons, and all installments or balances thereof, to apply the remainder of said moneys to the satisfaction of the principal of the aforesaid bonds, which may be due and unpaid, rateably, and without discrimination or preference.

Fourth. In case default shall be made as aforesaid and shall continue as aforesaid, it shall also be lawful for the said parties of the second part, after entry as aforesaid, or without entry, on the request of the person or persons owning and holding the majority in amount of the said delinquency, expressed in writing to the said parties of the second part, to sell and dispose of the premises hereby conveyed at public auction, in the city of New York, or at such place as the parties of the second part may designate, having first given notice of the time and place of such sale by advertisement, published not less than once a week, for six months, in one or more newspapers published in each of the cities of New York and Davenport, and to adjourn the said sale from time to time, by announcement at the time and place advertised,
637 [165] without other notice, and to make and deliver unto the purchaser or purchasers thereof good and sufficient deeds, conveyance, or other assurance in the law, to vest in the said purchaser or purchasers of the said premises an absolute estate in the said premises in fee simple; which sale, so made, as aforesaid, shall be a perpetual lien, both in law and in equity, against the said party of the first part, and all and every other person or persons claiming or to claim the same by, from, through, or under the said party of the first part; and after deducting from the proceeds of such sale, just allowance for all the ex-

penses thereof, including a reasonable amount for attorney's fees, and any other necessary expenses incurred by the said trustees in managing the business of the said railroad, while in possession, or in arranging the sale thereof, to apply the remaining proceeds to the payment of the principal of such of the aforesaid bonds as may be at that time unpaid, whether or not the same shall have previously become due, and the interest which shall, at that time, have accrued on the said principal, and be unpaid, without discrimination or preference, but rateably to the aggregate amount of such unpaid principal and such accrued and unpaid interest, in United States gold coin at par; and if, after satisfaction thereof as aforesaid, a surplus of the said proceeds shall remain, to pay the same over to the party of the first part.

Fifth. At any sale of the aforesaid property, or any part thereof, whether made under the power herein granted or by judicial authority, the parties of the second part may bid for and purchase the property so sold, or any part thereof, for and on behalf of the holders of the bonds hereby secured and then outstanding, in proportion to the respective interests of such bondholders.

Sixth. In case default shall be made in payment of any half year's interest on any of the aforesaid bonds, according to the tenor and effect of the coupons thereto annexed, and if such default shall con-
638 [166] tinue for the period of six months after such coupons shall have become due, and payment thereof shall have been demanded, then the principal of all the bonds secured hereby, if a majority in interest of all the holders of the said bonds shall so direct, in writing, before the interest so in arrears shall have been paid, shall be declared by the said parties of the second part to be immediately due and payable, and thereupon the same shall become due and payable, anything contained in the said bond or herein to the contrary notwithstanding.

Seventh. The said party of the first part shall from time to time, and as often as thereunto requested by the said trustees, or their successor or successors in the said trust, execute, acknowledge, and deliver all such further deeds, conveyances, and acceptances as shall be necessary for the better assuring unto the trustees aforesaid, or their successors, the said railroad and equipments, rights, and equities herein before mentioned, or intended so to be, and all other property and things whatsoever which may be hereafter acquired for use in connection with the same or any part thereof, and all franchises now held, or hereafter to be acquired, including the franchise to be a corporation.

Eighth. The said trustees and their successors shall have power in their discretion, upon the written request of the party of the first part, to convey by way of release or otherwise, to the person or persons designated by the said party of the first part, any lands acquired or held for the purpose of stations, depots, shops, or other buildings; any land or property which, in the judgment of the said trustees for the time being, shall not be necessary for use in connection with the said railroad, or which may have been held for a supply of fuel, gravel, or other material, and also to convey as aforesaid, on like request. any land not occupied by the track which may become disused by reason of a change of the location of any station-house, depot, shop, or building con-
639 [167] nected with the said railroad, and such lands occupied by the track and adjacent to such station-house, depot, shop, or other building as the said party of the first part may deem it expedient to disuse or abandon, by means of such change, and to consent to any such change and such other changes in the location of the track, or depots or other buildings as in their judgment shall have become expedient,

and to make and deliver the conveyances necessary to carry the same into effect; but any proceeds from such sales are to be placed at the disposal of the trustees, to be by them applied to the sinking-fund, and any land which may be acquired for permanent use, in substitution for any so released, shall be conveyed to the said trustees upon the trusts of these presents; and the said trustees, for the time being, shall also have full power to allow the said party of the first part from time to time to dispose of, according to their discretion, such portions of the equipments, machinery, and implements at any time held or acquired for the use of the said railroad, as may have become unfit for use, replacing the same by new, which shall be conveyed to the said trustees, or otherwise made subject to the operation of these presents.

Ninth. It is hereby declared and agreed that it shall be the duty of the trustees aforesaid, and their successors, to exercise the power of entry hereby granted, or the power of sale hereby granted, or both, or to take the appropriate proceedings in equity or at law, to enforce the rights of the holders of the said bonds under these presents, upon the written request hereinbefore mentioned, when the person or persons making the same shall furnish to the said trustees a proper indemnification against the cost and expenses to be incurred by them therein.

"Tenth. It is mutually agreed by and between the parties hereto that the words 'trustees' or 'trustee,' respectively, as used in these
640 [168] presents, shall be construed to mean the persons or person who, for the time being, shall be charged with the execution of the trusts under these presents, whether such persons or person be the parties of the second part hereto, or either of them, or successors or successor of the said parties of the second part, or either of them, in said trust. And it is further mutually agreed that each of the said trustees shall be entitled to just compensation for any and all services which he shall hereafter render in his trust, to be paid by the said party of the first part, or out of the income of the trust property; and that neither of the said trustees shall be responsible for the default or misconduct of the other or for the default or misconduct of any agent appointed in pursuance of these presents, if such agent be selected with reasonable care. And it is hereby further agreed that either of the said trustees may resign, and be discharged from the performance of the trust created by these presents, by giving notice, in writing, to the said party of the first part, and to his associate trustee, if there be such, of his intention so to resign, to be served at least three months before the time limited therein for the taking effect of such resignation; and that the said trustees, or either of them, may be removed by the holders of a majority in interest of the whole amount of said bonds, by an instrument in writing signed by such majority in interest. And it is further agreed that in case at any time hereafter the said trustees, or either of them, or any trustee hereafter appointed, shall die, or resign, or be removed, as herein provided or otherwise, or shall become incapable or unfit to act in said trust, a successor to such trustee shall be appointed by the holders of a majority in interest of the total amount of said bonds then outstanding, by an instrument in writing duly executed by such holders; that in case a vacancy shall at any time occur in said trust, by death, resignation, or otherwise, the surviving or continuing trustee
641 [169] shall, during such vacancy, be vested with all the rights, powers, and authorities granted by these presents to the said parties of the second part; that any act or thing which it is herein made the duty of the said trustees to do, as distinguished from matters in their discretion, may be done by one of the said trustees as

validly as by both, in case of the inability, refusal, or unreasonable delay of either of them to join in doing the same; and that upon the resignation or removal of any trustee, and the appointment of another trustee in his place, all the estate and interest, rights, powers, and authorities, under this indenture, of the trustee so resigning or being removed shall be transferred to and become vested in the new trustee so appointed, without any further assurance or conveyance; but the trustee so resigning or being removed shall, on the written request of the party of the first part, or of the new trustee who may be appointed, immediately execute a proper deed or deeds of conveyance to vest in such new trustee all the estate and interest, rights, powers, and authorities which were vested in or held by such resigning or removed trustee, under or by virtue of these presents; provided, nevertheless and it is hereby agreed and declared that in case it shall at any time hereafter prove impracticable to appoint a trustee hereunder, in the manner hereinbefore provided, and that a vacancy in said trust shall remain unfilled for the space of sixty days, application on behalf of all the holders of the bonds secured hereby may be made, on reasonable notice in writing, to the said party of the first part, and to the surviving and continuing trustee, if there be such, by holders of said bonds to the aggregate amount of one hundred thousand dollars to any court of competent jurisdiction for the appointment of a new trustee or new trustees."

Eleventh. The said party of the first part, in consideration
642 [170] of the premises, and of the said sum of one dollar duly paid as aforesaid, hereby further covenants and agrees to and with the said parties of the second part and their successor or successors in the said trust, to have an office or agency in the city of New York for the payment of the principal, and an agency in each of the cities of New York, London, and Frankfort-on-the-Maine, for the payment of the interest of the bonds hereby secured, as the same shall respectively become due and payable.

Twelfth. The said party of the first part, for the considerations aforesaid, hereby further covenants and agrees to and with the said parties of the second part and their successor or successors that the proceeds of the said bonds shall, at all times, be faithfully applied to the uses and purposes hereinafter specified, and to no other use or purpose whatsoever.

Thirteenth. The said party of the first part agrees and covenants with the parties of the second part and their successors that it will create a sinking fund for the redemption of the whole amount of bonds hereby secured and will therefore set apart and deposit with a sinking-fund commissioner or commissioners to be appointed by the party of the first part on the first day of July, 1875, the sum of $40,000, and will on the first day of July of each and every year thereafter deposit with said commissioner or commissioners the like sum of $40,000, such annual deposits to be continually invested and compounded with the interest thereof for the increase of the said sinking-fund until the maturity of said bonds; such sinking fund moneys shall, from time to time, under the orders of the party of the first part, be invested in the purchase of the bonds hereby secured, as long as the same can be purchased under or at par, and when this cannot be done then in such other bonds as shall be designated by the party of the first part, with the consent of the said parties of the second part, and the money accruing on any and all of
643 [171] such investments for interest, as fast as the same shall be received, shall be added and paid into such sinking-fund and compounded therein continually, and reinvested in like manner with the other monies of said fund, and the same shall be used solely

to redeem and eventually pay off said bonds herein and hereby secured. That the board of directors of said railroad company, party of the first part, shall have entire control over the management of said sinking-fund, and every person in charge of or connected with the same, and direct how it shall be kept and the manner of keeping the accounts thereof; and shall require ample security to be given to them by any person in charge of its moneys, or its securities or bonds, for its safe keeping.

Provided, that no securities shall be purchased for said fund other than the bonds secured hereby without the consent of the parties of the second part as aforesaid.

Fourteenth. And the said party of the first part, for the considerations aforesaid, hereby further covenants and agrees to and with the said parties of the second part that it, the said party of the first part, shall and will at all times hereafter, observe, perform, and keep all and every the conditions, covenants, and provisions herein contained, to be by the said party of the first part performed and kept.

Fifteenth. If the party of the first part shall well and truly pay the sums of money herein required to be paid by the said party, and all interest thereon, and at the times and in the manner hereinbefore specified, and shall well and truly keep and perform all the things herein required to be kept and performed by the said party of the first part, according to the true intent and meaning of these presents, then and in that case the estate, right, title, and interest of the said parties of the second part, and of their successors in the trust hereby created, shall cease, determine, and become absolutely void; otherwise to be and remain in full force and virtue.

644 [172] Sixteenth. In all cases in which the trustees may be required to act, they are hereby invested with full powers of arbitrament and of compromise, and of appointing agents and attorneys to act in their behalf.

In testimony whereof the said party of the first part has caused its corporate seal to be hereto affixed, and these presents to be attested by the signatures of its president and secretary; and the parties of the second part, to testify their acceptance of the said trusts, have hereunto subscribed their names on the day and year first hereinbefore written.

DAVENPORT & S'T PAUL RAILROAD COMPANY,
[SEAL.] By GEO. H. FRENCH, *President.*
Attest:
[SEAL.] W. H. PRICE,
Secretary D. & S't P. R. R. Co.

J. EDGAR THOMSON, *Trustee.* [SEAL.]
W. DENNISON, *Trustee.* [SEAL.]

Signed, sealed, and delivered in presence of—
LEWIS SANDERS,
GARDINER MCCANDLESS.

UNITED STATES OF AMERICA,
State of New York, City of New York, ss:

On this sixteenth day of May, A. D. 1872, before me, a notary public duly commissioned by the governor of the State of New York and duly qualified to administer oaths and take acknowledgment of deeds for the county of New York, personally appeared George H. French and W. H. Price, to me known, and known to me to be the identical president and

secretary of the Davenport and S't Paul Railroad Company, and known to me to be the persons who executed the foregoing instrument, who, being by me duly and severally sworn, said that they reside in the city of Davenport, State of Iowa; that they were respectively
645 [173] the president and secretary of the said company; that they knew the corporate seal of said company; that the seal affixed to the foregoing instrument was such corporate seal; that it was affixed by order of the board of directors of said company, and that they signed their names thereto by the like order as president and secretary respectively of said company; and the said president and secretary thereupon severally acknowledged the execution of the foregoing instrument as the voluntary act and deed of said company; and on the same day, before me, the said notary public, personally appeared William Dennison, to me known, and known to me to be the identical person and trustee described in and who executed the foregoing instrument, who duly acknowledged as such trustee that he executed the same as his voluntary act and deed; and on the fourteenth day of May, A. D. 1872, before me, the said notary public, personally appeared J. Edgar Thomson, to me known, and known to me to be the identical person and trustee described in and who executed the foregoing instrument, who duly acknowledged as such trustee that he executed the same as his voluntary act and deed.

In witness whereof I have hereunto set my hand and affixed my seal.

[SEAL] LEWIS SANDERS,
Notary Public, New York.

Filed for record 4th June, 1872, at 7½ o'clock, a. m.

HENRY HARGER,
Recorder,
By J. L. STONE, *Deputy.*

Amendment to mortgage.

The Davenport and S't Paul Railroad Co. to John Edgar Thomson Co.

This indenture, made the first day of July, in the year of our Lord one thousand eight hundred and seventy-one, by and between the Davenport and S't Paul Railroad Company, a corporation formed,
646 [174] organized, and existing by and under the laws of the State of Iowa, party of the first part, and John Edgar Thomson, of the city of Philadelphia, in the State of Pennsylvania, and William Dennison, of the city of Columbus, in the State of Ohio, parties of the second part:

Whereas the said party of the first part has made, executed, and delivered to said parties of the second part a certain indenture of even date with these presents, and therein called a mortgage or deed of trust, to secure the payment of its first-mortgage bonds as in said indenture mentioned;

And whereas it is desirable for the better protection of the rights of purchasers and holders of said bonds that said mortgage or deed of trust should be amended in the manner hereinafter set forth:

Now, therefore, these presents witness that, in consideration of the premises and of one dollar to each by the other in hand paid, the said parties of the first part and the said parties of the second part do hereby mutually grant, covenant, promise, and agree to and with each other as follows:

That the said indenture of mortgage or deed of trust shall be, and shall for all intents and purposes be considered and taken to be, amended in the following respects:

First. That in lieu of the tenth and sixteenth articles thereof the said sixteenth article be omitted entirely from said indenture, and the said tenth article as herein contained be amended and read as follows:

"Tenth. It is mutually agreed by and between the parties hereto that the words 'trustees' or 'trustee,' respectively, as used in these presents, shall be construed to mean the persons or person who for the time being shall be charged with the execution of the trusts under these presents, whether such persons or person be the parties of the second part hereto, or either of them, or successors or successor of the said par-
647 [175] ties of the second part, or either of them, in said trust. And it is further mutually agreed that each of the said trustees shall be entitled to just compensation for any and all services which he shall hereafter render in his trust, to be paid by the said party of the first part, or out of the income of the trust property; and that neither of the said trustees shall be responsible for the default or misconduct of the other or for the default or misconduct of any agent appointed in pursuance of these presents, if such agent be selected with reasonable care. And it is hereby further agreed that either of the said trustees may resign, and be discharged from the performance of the trust created by these presents, by giving notice, in writing, to the said party of the first part, and to his associate trustee, if there be such, of his intention so to resign, to be served at least three months before the time limited therein for the taking effect of such resignation; and that the said trustees, or either of them, may be removed by the holders of a majority in interest of the whole amount of said bonds, by an instrument in writing, signed by such majority in interest. And it is further agreed, that in case at any time hereafter, the said trustees, or either of them, or any trustee hereafter appointed, shall die, or resign, or be removed, as herein provided or otherwise, or shall become incapable or unfit to act in said trust, a successor to such trustee shall be appointed by the holders of a majority in interest of the total amount of said bonds then outstanding, by an instrument in writing duly executed by such holders; that in case a vacancy shall at any time occur in said trust, by death, resignation, or otherwise, the surviving or continuing trustee shall, during such vacancy, be vested with all the rights, powers, and authorities granted by these presents to the said parties of the second part; that any act or thing which is herein made the duty of the said trustees to do, as distinguished from matters in their dis-
648 [176] cretion, may be done by one of the said trustees as validly as by both, in case of the inability, refusal, or unreasonable delay of either of them to join in doing the same; and that upon the resignation or removal of any trustee, and the appointment of another trustee in his place, all the estate and interest, rights, powers, and authorities, under this indenture, of the trustee so resigning or being removed shall be transferred to and become vested in the new trustee so appointed, without any further assurance or conveyance; but the trustee so resigning or being removed shall, on the written request of the party of the first part, or of the new trustee who may be appointed, immediately execute a proper deed or deeds of conveyance to vest in such new trustee all the estate and interest, rights, powers, and authorities which were vested in or held by such resigning or removed trustee, under or by virtue of these presents; provided, nevertheless, and it is hereby agreed and declared that in case it shall at any time hereafter prove impracti-

cable to appoint a trustee hereunder, in the manner hereinbefore provided, and that a vacancy in said trust shall remain unfilled for the space of sixty days, application on behalf of all the holders of the bonds secured hereby may be made, on reasonable notice, in writing, to the said party of the first part, and to the surviving and continuing trustee, if there be such, by holders of said bonds to the aggregate amount of one hundred thousand dollars to any court of competent jurisdiction for the appointment of a new trustee or new trustees."

Second. And also that in the trustee's certificate endorsed on said bond at the request of the holder or holders thereof at any time shall be added the words, " and the supplemental deed of the same date."

Third. And also that article second of said indenture of mortgage or deed of trust, as therein contained, be amended and made to read as follows:

649 [177] "Second. The bonds which shall be executed and issued by the said party of the first part under the provisions of this instrument and therein recited shall be delivered to said trustees to be certified by them as trustees, and no bond shall be valid or binding, or be benefitted by the provisions hereof, unless the same shall be certified by the said trustees in the form aforesaid; and the said trustees shall not at any time certify or allow to be issued any bonds in excess of the rate of twenty thousand dollars for each mile of the said road upon which the work of grading, bridging, and tieing shall have been finished and completed, save as hereinafter provided."

And the said parties do hereby further mutually grant, covenant, promise, and agree to and with each other that if at any time before the whole work of grading, bridging, and tieing the entire line of the railroad in said indenture mentioned shall have been completed, any part of the bonds in said indenture provided for cannot be issued by reason of the terms and limitations therein expressed, and if the purchasers or purchaser of such bonds shall make deposit of the purchase-money thereof in the manner hereinafter provided, then and in that case such bonds shall be issued and certified by the trustees, and delivered to the purchasers thereof.

Provided always that the purchase-money therefor shall be deposited to the credit of the trustees in some banking house in the city of New York or Philadelphia, to be named by both the purchasers and trustees, which said purchase-money shall be used only in payment for iron and equipment of said railroad at a rate not to exceed the sum of twenty thousand dollars for each mile of the said railroad upon which the work of grading, bridging, and tieing shall have been completed, and be paid from time to time as the said work shall progress upon written direction of the trustees.

650 [178] In witness whereof the said Davenport and S't Paul Railroad Company hath caused these presents to be sealed with its common seal and to be subscribed by its president and secretary, and the said John Edgar Thomson and William Dennison have hereunto set their hands and seals the day and year first above written.

GEO. H. FRENCH, *Pres't.*

[SEAL.] W. H. PRICE, *Sec'y.*

J. EDGAR THOMSON,
W. DENNISON,
Trustees.

STATE OF IOWA,
County Scott:

Be it remembered that on this first day of February, anno Domini one thousand eight hundred and seventy-two, before me, a notary public in and for the said county, personally came George H. French, president of the Davenport and S't Paul Railroad Company, and William H. Price, the secretary thereof, to me known to be the identical persons whose names are subscribed to the foregoing instrument, and in due form of law acknowledged the execution and delivery of the same to be their voluntary act and deed, done by virtue of the power in them vested by a resolution of the board of directors of the said company, to that end duly and amply passed and adopted, as and for the voluntary act and deed of the said The Davenport and S't Paul Railroad Company.

In testimony whereof I have hereunto set my hand and notarial seal the day and year above written.

[SEAL.] ALFRED SULLY,
Notary Public, Scott County, Iowa.

STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

Before me, the subscriber, a notary public in and for the
651 [179] said city of Philadelphia, personally appeared the within-named J. Edgar Thomson, trustee, and in due form of law acknowledged that he executed the foregoing indenture as his voluntary act and deed, and desired that the same might be recorded as such.

In testimony whereof I have hereunto set my hand and notarial seal this third day of February, A. D. 1872.

[SEAL.] HENRY C. SPACKMAN,
Notary Public.

STATE OF OHIO,
Franklin County, ss:

Before me, the subscriber, a notary public in and for said county, personally appeared the within named William Dennison, trustee, and acknowledged the signing and sealing of the foregoing mortgage or deed of trust to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal this fifth day of February, A. D. 1872.

T. J. JANNEY,
Notary Public in and for Franklin Co., O.

Filed for record the 28th day of March, A. D. 1872, at 11 a. m.
HENRY HARGER,
Recorder.

EXHIBIT D.

Amendment to mortgage.

Davenport & S't Paul Railroad Co. to John Edgar Thomson & William Dennison.

This indenture, made the first day of March, in the year of our Lord one thousand eight hundred and seventy-two, by and between the Dav-

enport and Saint Paul Railroad Company, a corporation formed, organized, and existing by and under the laws of the State of
652 [180] Iowa, party of the first part, and John Edgar Thomson, of the city of Philadelphia, in the State of Pennsylvania, and William Dennison, of the city of Columbus, in the State of Ohio, parties of the second part:

Whereas the party of the first has made, executed, and delivered to said parties of the second part a certain indenture, bearing date the first day of July, one thousand eight hundred and seventy-one, and therein called a mortgage or deed of trust, and at a later day has likewise made, executed, and delivered to said parties of the second part a deed supplemental to and amendatory thereof, likewise bearing date the first day of July, one thousand eight hundred and seventy-one, to secure the payment of its first-mortgage bonds, as in said two deeds mentioned;

And whereas three thousand of the bonds provided for in said two deeds have been issued by said party of the first part in pursuance of said two deeds before the day of the date of these presents;

And whereas it is deemed desirable for the better protection of holders of said bonds that said mortgage or deed of trust should be further amended in the manner hereinafter set forth; and that provision be made to enable the holders of the said bonds already issued to exchange the same, upon surrender thereof, for a like amount of bonds of the amended form hereinafter provided for, and upon such surrender and exchange to acquire all the rights and benefits secured, and intended to be secured, by these presents:

Now, therefore, these presents witness that, in consideration of the premises and of one dollar to each by the other in hand paid, the said party of the first part and the said parties of the second part do hereby mutually grant, covenant, promise and agree to and with each other as follows:

653 [181] That the said indenture of mortgage or trust deed shall be, and shall for all intents and purposes be considered and taken to be, amended in the following respects:

First. That in lieu of the tenth and sixteenth articles thereof, the said sixteenth article be omitted entirely from said indenture, and the said tenth article as therein contained be amended and made to read as follows:

"Tenth. It is mutually agreed by and between the parties hereto that the words 'trustees' and 'trustee,' respectively, as used in these presents, shall be construed to mean the persons or person who, for the time being, shall be charged with the execution of the trusts under these presents, whether such person or persons be the parties of the second part hereto, or either of them, or successors or successor of the said parties of the second part or either of them in said trust. And it is further mutually agreed that each of the said trustees shall be entitled to just compensation for any and all services which he shall hereafter render in his trust, to be paid by the said party of the first part, or out of the income of the trust property, and that neither of the said trustees shall be responsible for the default or misconduct of the other, or for the default or misconduct of any agent appointed in pursuance of these presents, if such agent be selected with reasonbale care. And it is hereby further agreed that either of the said trustees may resign, and be discharged from the performance of the trust created by these presents, by giving notice, in writing, to the said party of the first part, and to his associate trustees, if there be such, of his intention so to

resign, to be served at least two months before the time limited therein for the taking effect of such resignation, and that the said trustees or either of them, may be removed by the holders of a majority in interest of the whole amount of said bonds, by an instrument in writing, signed by such majority in interest. And it is further agreed that in case, at any time hereafter, the said trustees, or either of them,
654 [182] or any trustee hereafter appointed, shall die, or resign, or be removed, as herein provided or otherwise, or shall become incapable or unfit to act in said trust, a successor to such trustee shall be appointed by the holders of a majority in interest of the total amount of said bonds then outstanding, by an instrument in writing duly executed by such holders; that in case a vacancy shall at any time occur in said trust, by death, resignation, or otherwise, the surviving or continuing trustee shall, during such vacancy, be vested with all the rights, powers, and authorities granted by these presents to the said parties of the second part; that any act or thing which is herein made the duty of the said trustees to do, as distinguished from matters in their discretion, may be done by one of the said trustees as validly as by both, in case of the inability, refusal, or unreasonable delay of either of them to join in doing the same, and that upon the resignation or removal of any trustee, and the appointment of another trustee in his place, all the estate and interest, rights, powers, and authorities, under this indenture, of the trustees so resigning or being removed shall be transferred to and become vested in the new trustee so appointed, without any further assurance or conveyance, but the trustee so resigning or being removed shall, on the written request of the party of the first part, or of the new trustee who may be appointed, immediately execute a proper deed or deeds of conveyance to vest in such new trustee, all the estate and interest, rights, powers, and authorities which were vested in or held by such resigning or removed trustee, under or by virtue of these presents, provided, nevertheless, and it is hereby agreed and declared that in case it shall at any time hereafter prove impracticable to appoint a trustee hereunder, in the manner hereinbefore provided, and that a vacancy in said trust shall remain unfilled for the space of sixty days, application on behalf of all the holders of
655 [183] the bonds secured hereby may be made, on reasonable notice, in writing, to the said party of the first part, and to the surviving and continuing trustee, if there be such, by holders of said bonds to the aggregate amount of one hundred thousand dollars to any court of competent jurisdiction for the appointment of a new trustee or new trustees."

Second. And also the form of bond recited, set forth and provided for in said mortgage or deed of trust shall be amended in the following particulars, viz: the clause "The payment of this bond is secured by a mortgage or deed of trust of the company, on its road-bed, bridges, depot-grounds, and buildings, rolling-stock, machinery, franchises, and all its property of every kind, as also net incomes, acquired and to be acquired, to John Edgar Thomson, of Pennsylvania, and William Dennison, of Ohio, trustees, dated July 1st, 1871," shall be amended and made to read as follows: "The payment of this bond is secured by a mortgage or deed of trust, bearing date July 1st, 1871, and by a deed supplemental to and amendatory thereof, bearing date March 1st, 1872, executed by said company on its road-bed, bridges, depot grounds, and buildings, rolling-stock, machinery, franchises, and all its property of every kind, as also net incomes, acquired and to be acquired, to John

Edgar Thomson, of Pennsylvania, and William Dennison, of Ohio, trustees."

And also that the trustees' certificate endorsed on said bonds shall be amended and made to read as follows: "The undersigned hereby certify that this bond is one of the series of bonds described in and secured by the within-mentioned mortgage or deed of trust, dated July 1st, 1871, and the deed supplemental to and amendatory thereof dated March 1st, 1872."

656 [184] Third. And also that article second of said indenture of mortgage or deed of trust as therein contained, be amended and made to read as follows:

"Second. The bonds which shall be executed and issued by the said party of the first part under the provisions of this instrument and therein recited shall be delivered to said trustees to be certified by them as trustees, and no bond shall be valid or binding, or be benefitted by the provisions hereof unless the same shall be certified by the said trustees in the form aforesaid; and the said trustees shall not at any time certify or allow to be issued any bonds in excess of the rate of twenty thousand dollars for each mile of the said road upon which the work of grading, bridging, and tieing shall have been finished and completed."

And the said parties do hereby further mutually grant, covenant, promise and agree to and with each other, that no other or further issue of said bonds in the form provided for in said mortgage or deed of trust shall be issued by said parties of the first part or certified by said parties of the second part, and that upon surrender of such of said bonds as have been issued before the day of the date of these presents, said party of the first part will issue and deliver in exchange therefor an equal amount of bonds of the amended form herein above provided for, and the bonds so received in exchange shall thereupon be cancelled, and the obligation thereof extinguished.

And the said parties do hereby further mutually grant, covenant, promise and agree to and with each other that although by reason of the terms and limitations in said mortgage or deed of trust and these presents expressed, it shall be unlawful for the trustees to certify any part of the issue of bonds therein provided for; nevertheless upon deposit of the purchase money thereof by the purchaser as hereinafter in these presents provided, the bonds so purchased shall be certified by the trustees and issued to such purchaser.

657 [185] Provided always that the purchase money therefor shall be deposited to the credit of the trustees in some banking house in the city of New York or Philadelphia, to be named by both the purchasers and the trustees, which said purchase money shall be used only in payment for iron and equipment of said railroad at a rate not to exceed the sum of twenty thousand dollars for each mile of the said railroad upon which the work of grading, bridging, and tieing shall have been completed, and be paid from time to time as the said work shall progress upon written direction of the trustees.

In witness whereof the said Davenport & S't Paul Railroad Company hath caused these presents to be sealed with its common seal and to be subscribed by its president and secretary, and the said John Edgar

Thomson and William Dennison have hereunto set their hands and seals the day and year first above written.

GEO. H. FRENCH,
President.

[SEAL.] W. H. PRICE, *Secretary.*
J. EDGAR THOMSON,
W. DENNISON,
Trustees.

Signed, sealed and acknowledgd in the presence of—
WM M. SPACKMAN,
HENRY C. SPACKMAN, as to J. Edgar Thomson.
G. MOODIE,
T. J. JANNEY, as to William Dennison.

STATE OF IOWA,
Scott County:

Be it remembered that on this sixteenth day of March, A. D. 1872, before me, a notary public in and for Scott County, Iowa, duly qualified, personally came George H. French, president, and William H. Price, secretary of the Davenport & S't Paul Railroad Company, to me personally known to be the identical persons whose names are
658 [186] subscribed to *be* the foregoing instrument, the one as president and the other as secretary of said company, and severally acknowledged the same to be their voluntary act and deed, and the voluntary act and deed of said company.

Witness my hand and notarial seal the day and year last above written.

[SEAL.] H. A. H. PLAYTER,
Notary Public, Scott Co., Iowa.

STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

Before me the undersigned, a notary public for *of* the city of Philadelphia, State of Pennsylvania, duly commissioned and qualified, personally came the within named J. Edgar Thomson, trustee, and party of the second part in the foregoing indenture, and who is personally known to me as the person who signed the same as such, and acknowledged that he did sign, seal and execute the same, for the use and purposes therein mentioned, as his voluntary act and deed.

In witness whereof, I have hereunto set my hand and affixed my notarial seal this seventh day of March, A. D. 1872.

[SEAL.] HENRY C. SPACKMAN,
Notary Public.

STATE OF OHIO,
Franklin County, ss:

Before me, the undersigned, a notary public of the State of Ohio, in and for said Franklin County, personally appeared the within named W'm Dennison, trustee, and a party of the second part in the foregoing indenture, and who is personally known to me as the person who signed the same as such, and acknowledged that he did sign, seal and execute the same for the uses and purposes therein mentioned as his voluntary act and deed.

659 [187.] In witness whereof I have hereunto affixed my hand and notarial seal this fourteenth day of March, A. D. 1872.

[SEAL.] T. J. JANNEY,
Notary Public in and for Franklin Co., Ohio.

Filed for record the 25th day of March, A. D. 1872, at 12 o'clock m.
HENRY HARGER, *Recorder.*

STATE OF IOWA,
Delaware County, ss:

I, H. C. Jackson, recorder of Delaware County, in the State of Iowa, do hereby certify the above and foregoing is a full, true, correct, and examined copy of the record of two mortgages from "The Davenport and S't Paul Railroad Co." to J. Edgar Thomson and William Dennison, and two amendatory mortgages to the same, as the same appears in my office, in Book B of mortgages of town lots, on pages 473, 491, 498 and 510.

Witness my hand this 5th day of August, 1875.

H. C. JACKSON,
Recorder of Del. Co., Iowa.

660 STATE OF IOWA,
Delaware County, ss:

I, J. B. Satterlee, clerk of the circuit court in and for said county, do hereby certify that the within *as* a full, true, and complete copy of the record in the action in which the same is set out and shown forth by my certificate on 117 thereof, as fully and complete as the same now remains of record in my office.

Witness my hand and the seal of said court, hereto attached, the 8th day of Oct., 1875.

[SEAL.] J. B. SATTERLEE,
Clerk Circuit Court.

661 In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company et al.

It is hereby stipulated and agreed by and between Lewis H. Meyer and William Dennison, trustees, complainants in the above-entitled cause, by Grant and Smith, their solicitors, and the Delaware Railroad Construction Company and the Delaware County Railroad Company, defendants, by J. M. Brayton, its solicitors, that the testimony of the following witnesses, all residing upward of one hundred miles from the city of Des Moines, Iowa, viz, R. Boon, C. F. Fleming, R. Eddy, J. M. Holbrook, Henry Harger, A. E. Martin, F. B. Doolittle, H. C. Jackson, shall be taken before J. B. Baggs, a United States commissioner in and for the district of Iowa, on the 15th day of March, to begin at three o'clock p. m. on said day, and to continue until said testimony
662 shall be completed. The testimony of the said witnesses to be read in evidence by either of the parties hereto in the trial of the above-entitled causes. Dated March 15, 1876.

(S'g'd) GRANT AND SMITH.
(") J. M. BRAYTON,
Sol. for Del. Co. R. R. Co. and Cel. Co. R. R. Con. Co.

In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS ET AL.
vs.
DAVENPORT AND S'T PAUL R. R. COMPANY ET AL.

STATE OF IOWA,
County of Delaware:

Be it remembered that on the 15th day of March, A. D. 1876, at three o'clock p. m., at the village of Delhi, in said county, before me, a commissioner appointed by the circuit court of the United States within and for the district of Iowa, under and by virtue of the annexed
663 agreement were produced and personally came before me the following named persons, to wit:

J. M. Holbrook was called as witnesses in behalf of the parties named in said stipulation, to depose in the above-entitled cause, being the cause mentioned in annexed stipulation, and whose testimony is alleged to be material and necessary in said cause; and the said witnesses being of lawful age and sound mind, and being by me first carefully examined, cautioned, and duly sworn on their respective corporal oaths to testify the whole truth touching the matters in controversy in said civil cause, respectively depose and say as follows:

Deposition of J. M. HOLBROOK, a witness produced and sworn on behalf of the defendant.

Interrogatory 1st. What is your name, age, and place of residence and occupation?

Ans. My name is J. M. Holbrook. My age is forty-five years. My residence is at Delhi, Iowa. My occupation is that of county trea-
664 surer of Delaware County, Iowa.

Int. 2nd. State whether or not you are a member of the Delaware County Railroad Company.

Ans. I am.

Int. 3d. Who is president of that company.

Ans. I am.

Int. 4th. How long have you held that office?

Ans. Since about the 18th of January, A. D. 1875.

Int. 5th. Have you any knowledge of the purchase of any railroad property by said company?

Ans. I have.

Int. 6th. State what that property was.

Ans. The interest that the Delaware Railroad Construction Company had in the Davenport and S't Paul Railroad.

Int. 7th. What property did that include?

Ans. It included that part of the Davenport and S't Paul Rail-
665 road lying in Delaware County, Iowa.

Int. 8. Who acted for the Delaware County Railroad Company in that purchase?

Ans. I did.

Int. 9th. Will you state the consideration on the part of the Delaware County Railroad Company?

Ans. The consideration was promissory notes. I cannot tell the exact amount, but it strikes me it was about or rising thirty-three thousand dollars.

Int. 10. Will you state what occurred at the purchase of the property?

Ans. I as president of the Delaware County Railroad Company made

the offer, and M'r Eddy, on the part of the other company, accepted it.

Int. 11. State what the offer was.

Ans. It was these promissory notes I spoke of, and a company note, the amount of which I do not remember.

Int. 12. State what was said at the trade.

666 Ans. I do not remember all that was said. I made the offer and he accepted it.

Int. 13. After he accepted the offer what occurred?

Ans. I passed over the consideration, and he passed the deed and certificate of sale.

Int. 14th. What deed was passed over?

Ans. A sheriff's deed to that portion of the Davenport and S't Paul Railroad situated in Delaware County, also a sheriff's certificate of sale for the same.

Int. 15th. Do you know to whom the sheriff's deed was made; to the old company, M'r Eddy, or some one else?

Ans. I do not recollect. It was made to M'r Eddy as trustee of the Delaware Construction Company.

Int. 16th. State whether or not a deed was executed to the Delaware County Railroad Company.

Ans. I think there was. I think it was executed by R. Eddy, as trustee of the Delaware Railroad Construction Company.

667 Int. 17th. State whether or not the note given by the Delaware County Railroad Company at the time of the purchase has been paid.

(Question objected to by plaintiff, on the ground that the same is leading and assumes facts not proven.)

Ans. Some of it is; am not certain how much is.

Int. 18th. Do you know whether or not the note has been taken up?

Ans. I think it has.

Int. 19th. How was it taken up?

Ans. I think it was taken up by taking up the notes or paying the indebtedness of the old company.

Cross-examined by plaintiffs' att'y:

Int. 1st. You have been president of the Delaware County Railroad Company since it organization, have you not?

Ans. Yes.

Int. 2d. When was that company organized?

Ans. Some time about the 18th day of January, 1875.

668 Int. 3d. This company was organized as a corporation under the laws of Iowa, was it not?

Ans. It was organized as a railroad company; I don't know whether you consider it a corporation—I suppose so.

Int. 4th. You filed the articles of incorporation with the recorder of Delaware County, Iowa, did you not?

Ans. I think we did. I think it was done; but who did it, I do not recollect.

Int. 5th. When were they filed with the recorder?

Ans. At the time of organization of the company, or soon after.

Int. 6th. Do you recollect the names of the incorporators?

Ans. I may not recollect them all; I do some of them. The names, as I recollect, are R. Eddy, J. M. Brayton, Benjamin Thorpe, C. F. Fleming, R. Boon, A. E. Martin, Charles Harger, Henry Harger, J. M. Holbrook.

Int. 7th. The first election of officers was on the 18th of January, A. D. 1875, was it not?

669 Ans. It was about that time; I think it was on the 18th.

Int. 8th. What members of the Delaware County Railroad Company were present at that election?

Ans. All the members of the company.

Int. 9. Who drew up the articles of incorporation of that company?

Ans. I don't know.

Cross 10. Did not you see the articles?

Ans. I did; I think M'r Brayton drew them.

Cross 11. Have you conversed with Judge Brayton as to the interest acquired by the Delaware Railroad Construction Company in the Davenport and S't Paul Railroad in Delaware County, under the sale to R. Eddy, as trustee of the Delaware Railroad Construction Company, in May, 1874, previous to the organization of the Delaware County Railroad Company?

Ans. I think I have, but can't swear positive.

670 Cross. 12. Did Judge Brayton ever speak to you of this clause in the contract of Delaware Railroad Construction Company with the Davenport and S't Paul Railroad Company, viz, "All the money for work hereinbefore speci'ed to be paid by the citizens of Delaware County," previous to the organization of the Delaware County Railroad Company?

Ans. No, sir; I think not.

Cross 13th. Did you know anything of that clause previous to that time?

Ans. No, sir.

Cross 14. When did you first hear of that clause?

Ans. I can't tell exactly, but some time within the last six months.

Cross 15th. You did not hear of it, then, at the time Dennison made his motion for a new trial?

Ans. I did not.

671 Cross 16th. Did you know that at the time judgment was rendered against Dennison and Thompson it was by default, and did you not know the fact before the purchase by the Delaware County Railroad Company?

Ans. I did not.

Cross 17th. Did you not know before said purchase that Dennison had a right to a new trial?

Ans. I did not.

Cross 18th. Then you had no knowledge, up to the time of said purchase, of any defense of the Davenport and S't Paul Railroad bondholders against the action of said construction company?

Ans. At the time the purchase was made I did not know of any defense said bondholders had. I had heard that there had been litigation about the matter before that. I did not know the condition of the litigation at that time, or that there was any.

Cross 19th. When was this purchase made by the Delaware County Railroad Company?

672 Ans. I think it was right away after the organization of the company; I think the next day, or such a matter. I will not swear positive that it was next day, but am positive it was within three days.

Cross 20. What members of the Delaware County Railroad Company were present at the time of the purchase?

Ans. M'r Eddy, myself, and M'r Brayton; but I can't say whether M'r Martin was or not; do not remember as to any others.

Cross 21. What authority had you to make this purchase?

Ans. I was authorized by the board of directors of the Delaware County Railroad Company to do so.

Cross 22. When was that authority given?

Ans. I can't tell the date, but think it was the same day the company was organized, or the next day.

It is now agreed that the evidence of this witness be taken in
673 nar'ative form till objection is made.

I think all the members of the Delaware County Railroad Company were present at the time the resolution was passed authorizing me to make the purchase, but cannot say certain. Judge Brayton, I think, was present. I do not recollect who drew the resolution, but rather think it was in Judge Brayton's handwriting. Judge Brayton was here at the time and took part in the deliberations and made suggestions, as he does at all meetings. I do not know as Judge Brayton's opinion was asked as to legal matters growing out of this transaction. I did not hear it. I do not know that Judge Brayton's opinion was given to the board of directors about these matters; if it was given I did not know of it. I was present at the time the resolution was passed and authority was given, I think all the time.

The meeting at the time of the organization, and also the meeting at the time the resolution was passed, were held at the office of Judge Brayton. I do not know who drew the deed to the Delaware County Railroad Company. I think very likely Judge Brayton did, but
674 don't know. I do not know who wrote the assignment to the certificate of sale. I do not know that the deed was examined by anybody or any lawyer. I do not know that our board got the opinion of any lawyer as to the validity of the deed or assignment; they may have done so without my knowledge.

There was a meeting of the Delaware Railroad Construction Company about the time the resolution was passed authorizing me to *to* purchase the road; can't say whether it was the same day or not; it was held at the office of Judge Brayton. I was not present at the meeting of the Delaware Railroad Construction Company.

At the time the deed was passed over, the notes duly executed were passed to M'r Eddy. I cannot tell when the thirty-three thousand dollars became due. I cannot say when the note of the Delaware County Railroad Company became due. The business of the purchase was done at the office of Judge Brayton. I do not know the time that the notes of the Delaware County Railroad Company was taken up with
675 notes of the Construction Company, but it was some time last summer or fall. The new company bought the notes of the old company by giving new notes of the Delaware County Railroad Company.

The object of the organization of the Delaware County Railroad Company was to make money, I expect. I do not know why the old company sold its interest. They never discussed that matter in my hearing.

From the time of the organization up to the time of the death of Charles Harger, in June, 1875, I was the president, Charles Harger was the secretary, and Henry Harger was the treasurer of the Delaware County Railroad Company. The president, secretary, and treasurer owned each only one share in said company. I do not know the total

number of shares owned by the members of the old company. Upon reflection I think there are three hundred and sixty-three shares of stock of the par value of one hundred dollars each. I think the smallest number of shares owned by any individual member of the company, except the president, secretary, and treasurer, is thirty shares.

676 All the members of the Delaware County Railroad Company at its organization, except the president, secretary, and treasurer, were members of the Delaware Railroad Construction Company, as I understand it. I know of no other reason why these three members, owning only one share each, were elected president, secretary, and treasurer, other than they were the best men for the position. I do not know that any reason was ever given at the time of the election for electing said men to said offices by any members of the company. The last meeting of the board of directors of the railroad company was held at M'r Harger's office, the former meetings were held at Judge Brayton's office. There have been about four meetings held in all. My impression is that a majority or nearly all the members are generally present and take part in the deliberations at the meetings of the board of directors.

I have not acted very extensively in the management of the affairs of the company. I suppose the board of directors have had most to do with the management. I do not know, but that is my impression. I do not know that Judge Brayton had been very active in the management of the affairs of the company. Judge Brayton has been acting as attorney, I suppose, under direction of the board of directors.

677

I do not know that Judge Brayton has been very active at the meetings of the board of directors. When the company met at Harger's office they adjourned and *and* the board of directors remained, and no person else. I think that meeting was held some time last summer; can't say positive what time.

I do not know that Judge Brayton took a very active part at the meetings of the board of directors. He was generally around and talked some.

Whereupon it is ordered that further proceedings in regard to taking testimony be adjourned till March 16th, 1876, at 8½ o'clock a. m.

MARCH 16TH—8½ o'clock a. m.

J. M. HOLBROOK appears and proceeds with his testimony as follows, to wit:

Redirect examination:

I do not know of F. B. Doolittle being present at any of the meetings of the Delaware County Railroad Company or of the board of directors of said company. J. M. Brayton is the attorney for the Delaware County Railroad Company. I think the president employed him under the direction of the board of directors.

678

The occasion of J. M. Brayton being employed was that there was litigation to be attended to, the nature of which I do not know. The object of the litigation was to get possession of the railroad. I think J. M. Brayton was employed by the Delaware County Railroad Company about the last of July or first of August, A. D. 1875. I do not know of his being employed before that time. I have been treasurer of Delaware County eight or nine years. I have collected and paid out taxes voted under the laws of Iowa by citizens of Delaware County to aid in the construction of the Davenport and S't Paul Railroad since 1870. I paid said taxes to F. B. Doolittle, assistant treasurer of the

Davenport and S't Paul Railroad Company, on the order of the president of the said company. I have the orders.

(Witness produces orders, copies of which are hereto attached, marked Exhibits A and B.)

679 Recross-examination:

I think there was a resolution of the board of directors authorizing me to employ Judge Brayton as attorney. I think it was made at one of the meetings last summer. This was the first formal employment of Judge Brayton that I know of. Judge Brayton may have given legal advice to the company or its officers before that time, but not to my knowledge. I do not know whether any deed or assignment was made by or to the railroad company without the advice of Judge Brayton, nor with the advice and approval of Judge Brayton. All the recording was none under direction of the board of directors, I suppose. I did not know that the deed from the sheriff of Delaware County to the railroad company was recorded twice. I do not know that it was done under the advice of Judge Brayton. I knew of no supposed irregularity in the first recording of that deed. I do not know whom the directors authorized to record the deed and assignment.

My impression is that the railroad company held their meetings,
680 and afterwards the board of directors would hold theirs. I do not know whether the company at all times held meetings on the same day the board of directors held theirs. I do not know but the directors held meetings when the railroad company did not. I do not remember how many meetings the railroad company have had, but I think more than four; can't say positively how many. There was not always a meeting of the board of directors when there was a meeting of the railroad company. I do not know how many meetings of the board of directors were held at the same time that a meeting of the company was held; they were sometimes held at the same time or immediately following each other; can't say that they were generally.

Can't state approximately when Warren A. Brayton became a stockholder in the company. The total amount of taxes collected by me and paid over to the Davenport and S't Paul Railroad Company on orders marked Exhibit A and B was twenty-three thousand two hundred and seventy-nine $\frac{23}{100}$ dollars, and said money was paid at the times in
681 *in* sums as shown by statement produced by witness, which is hereto attached and marked Exhibit C. There is still some taxes uncollected, the collection of which is enjoined and is still in litigation.

(Signed) J. M. HOLBROOK.

682 EXHIBIT A.

OFFICE OF THE DAVENPORT AND
S'T PAUL RAILROAD COMPANY,
No. 42 Brady Street, Davenport, Iowa, Feb'y 24, 1871.

To the Treasurer of Delaware County, Iowa:

SIR: You are hereby authorized and requested to pay to J. B. Dolittle, esq., of Delhi, as assistant treasurer of the Davenport and S't Paul R. R. Company, any money which may be in your hands now, or at any subsequent time, to which the Davenport and S't Paul R. R. Company may be entitled under sec. 3, of chap. 102, of the acts of the 13th gen'l assembly of the State of Iowa.

Very respectfully, &c.

H. PRICE,
Pres't Davenport and S't Paul R. R. Co.

683 EXHIBIT B.

OFFICE OF THE DAVENPORT AND
S'T PAUL RAILROAD COMPANY,
No. 42 Brady Street, Davenport, Iowa, Feb'y 18th, 1871.

J. M. HOLBROOK, esq., *Treas. Delaware County:*

Please pay to F. B. Doolittle, esq., ass't treas., all taxes collected and in your hands belonging to the Davenport and S't Paul R. R. Co., when he shall produce such vouchers and certificates as the law requires.

Very resp'y, &c.,

H. PRICE,
Treas. Dav. & S't Paul R. R. Co.

684 EXHIBIT C.

Delhi R. R. fund.

M'ch 2, 1871.	By paid	F. B. Doolittle,	ass't treas.	D. & S't P.	R. R. Co	.....	3,651 17
Ap'l 25,	"	"	"	"	"	.....	2,144 67
May 22,	"	"	"	"	"	.....	1,223 19
June 7,	"	"	"	"	"	.....	1,273 71
July 3,	"	"	"	"	"	.....	1,568 69
Aug. 22,	"	"	"	"	"	.....	1,454 54
Oct. 12,	"	"	"	"	"	.....	1,461 00
Dec. 7,	"	"	"	"	"	.....	1,217 68
Ap'l 3, 1872.	"	"	"	"	"	.....	302 25
June 17, 1873.	"	"	"	"	"	.....	137 88
Dec. 25,	"	"	"	"	"	.....	143 61
							14,578 42

South Fork R. R. fund.

Feb'y 21, 1871.	By paid	F. B. Doolittle,	ass't treas.	D. & S't P.	R. R.	.....	591 00
" 25,	"	"	"	"	"	.....	515 24
Dec. 7,	"	"	"	"	"	.....	6,022 95
Feb'y 3, 1874	"	"	"	"	"	.....	1,571 42
							8,700 61

Total, Delhi	14,578 42
" South Fork	8,700 61
Grand total	23,279 03

685 RENSSELAER EDDY, being next produced as a witness in said cause on part of the plaintiff, being of lawful age and sound mind, and being by me first carefully examined, cautioned, and duly sworn, on his corporal oath, to testify the whole truth touching the matters in controversy in said civil cause, deposes and says as follows:

It is agreed that the testimony of this witness be taken in nar'ative form until objection is made.

My name is Rensselaer Eddy. My age, sixty years. I reside in Delhi, Iowa. Occupation, lumber and grain dealer. I am one of the original incorporators and a stockholder in the Delaware Railroad Construction Company, and am a stockholder therein at the present time, and have been a stockholder from its organization. I held the office of president of said company from 1870 till some time in 1873, and from that time till the present time I have been treasurer, and all the time I have been a director of the company. I am also a stockholder of the

686 Delaware County Railroad Company. I own fifty-five shares in said railroad company. All the members of the Delaware Railroad Construction Company, except F. B. Doolittle, own the same number of shares in the Delaware County Railroad Company that I do. The reason for the organization of the Delaware County Railroad Company was that we could not, under the articles of incorporation of the Delaware Railroad Construction Company, operate a railroad. We thought if the road was not redeemed we could join with the road above here and operate the road.

I was present at the time of the organization of the Delaware County Railroad Company. My best recollection is that it was organized on the 18th day of January, A. D. 1875.

I think that the resolution of the board of directors of the Delaware Railroad Construction Company authorizing the sale of their interest in the Davenport and S't Paul Railroad was passed on the evening of the 18th of January, A. D. 1875.

687 I was not present at the time the resolution was passed authorizing the purchase of the interest of the Delaware Railroad Construction Company in the Davenport and S't Paul Railroad by the Delaware County Railroad Company. I think said resolution was passed on the 18th of January, 1875. The railroad company was organized in the forenoon. I think the board of directors of the new company were elected in the forenoon.

I went home. I was informed after I got home by M'r Martin that there was to be a meeting in the evening of that day of the board of directors or of the railroad company. I can't say which. In the evening I came up and found J. M. Holbrook, and I think all the other members of the new company present. I think J. M. Brayton was present. The meeting was at Judge Brayton's office. After I came, I, with the members of the board of directors of the construction company, went into the back room of Judge Brayton's office to transact some business for said company. There might have been some discussion about the sale in the front room before we retired to the back room, but I can't say positively.

688 The first I now remember about the proposition to sell occured in the back room after we retired to that room. I never had any conversation with either of the Hargers or Holbrook in relation to said sale before the offer was made that I recollect of. I do not know who drew up the offer. I do not know who drew the deed from R. Eddy, trustee, to the Delaware County Railroad Company. I do not know who drew the assignment of sheriff's certificate. I do not know who drew the sheriff's deed to the railroad company, but think the sheriff did it. I did not draw any of these papers. I do not know of any person being paid for so doing, except for the sheriff s deed to the construction company, and the sheriff was paid for that. I do not know whether I had any conversation with M'r Thorpe and M'r Boon in relation to the clause of construction company's contract in relation to the work being paid for by citizens of Delaware County, but presume I have. That matter was talked of some among the members. I think probably I have

689 conversed with one or both of them in relation to that clause. Am not certain.

The consideration paid the construction company for its interest in the railroad by the Delaware County Railroad Company was fifty-three thousand nine hundred and seventy-four and $\frac{73}{100}$ dollars. I think this amount was ascertained by computing the interest at ten per cent. from the time of the sale by the sheriff till the time of the sale to the Dela-

ware County Railroad Company and adding to the principal, and then the amount of the claim of Denton and Company was deducted.

The consideration for the sale to the Delaware County Railroad Company consisted of the notes of the members of the railroad company for the par value of their stock, amounting to the sum of thirty-three thousand two hundred dollars, and there was another note given by the Delaware County Railroad Company to the construction company of the amount of the balance of the sale. I am not certain when the stock notes of the individual members became due. My impression is
690 that it was in June or July, 1875. None of these notes are now in my hands. I did keep the custody of them until they became due. The Delaware Railroad Company's note became due at the same time, I think. The last mentioned was taken up by the company by paying up the indebtedness of the old company to that amount. The old company had given notes to subcontractors for the 20 per cent. remaining back, and the new company took up these notes to the amount of the note they had given and exchanged them for said note. I think the notes given to subcontractors by the construction company were in form of an ordinary promissory note, and were not endorsed by any of the individual members of the construction company. The notes given to the subcontractors were taken up by the Delaware County Railroad Company to the amount of the note of the Delaware County Railroad Company by giving to said subcontractors the notes of the said railroad company for like amount.

One small note of thirty or forty dollars was taken up with
691 money, which was the only one on which the money was paid. I think the notes were taken up in June or July last; am not certain. I cannot tell whether the notes were overdue or not. All the notes given by the railroad company on the purchase of the railroad were fully executed at the time the deed was delivered, to wit, on the 19th of January, 1875, that being the time the deed was delivered. I have stated all the consideration that passed from the Delaware County Railroad Company to the Delaware Railroad Construction Company for its interest in the Davenport and S't Paul Railroad. I never have seen any money pass as a consideration between those companies.

(Witness is shown a sheriff's certificate of sale, a copy of which is hereto attached and marked "Exhibit D"; also the assignment on the back of the same. Witness is also shown a deed, a copy of which is hereto attached and marked "Exhibit E.")

Witness says he is acquainted with the handwriting of J. M. Brayton, and that all of said instruments are in said Brayton's handwrit-
692 ing, and he believes said Brayton drew them, except the signatures of the makers and public officers appearing thereon.

Cross-examination:

I think when the contract came back there was some talk among the members of the construction company about the clause in the contract of the construction company with the Davenport and S't Paul Railroad Company, refer'ed to in my direct examination. I can't say whether it was at that time or afterwards. It might have been before or about the time the clause was stricken out or abrogated. I can't remember. I do not remember any particular conversation I have had with M'r Thrope or M'r Boon in relation to that matter. The construction company never did collect, or claim a right to collect, any money from the citizens of Delaware County, as far as I know. I paid my stock subscriptions to the Davenport and S't Paul Railroad Company to F. B. Doolittle,

693 as assistant treasurer and collector of the Davenport and S't Paul Railroad Company, and have known others to do so.

The notes that were given by the construction company to the subtractors, refer'ed to in my direct examination, were the ordinary promissory notes of the company, as I understand.

Int. 1st. Did you understand that the notes taken up by the Delaware County Railroad Company were bought by that company?

(Plaintiff objects to the question on the ground that the question asks the witness for conclusions of law and not facts.)

Ans. I suppose so.

Int. 2d. How did the Delaware County Railroad Company pay for the notes bought of the subcontractors?

(Plaintiff objects to the question for the reason that the question calls for a conclusion of law.)

694 Ans. With new notes of the Delaware County Railroad Company.

Cross 3d. Who held the notes taken up by the railroad company from the subcontractors?

Ans. I suppose the officers of the Delaware Railroad Company.

Cross 4. Who owned those notes?

(Objected to by plaintiff for the reason that the question calls for conclusion of law, not facts.)

Ans. They belonged to the Delaware County Railroad Company.

Cross 5th. Has the note of the Delaware County Railroad Company held by the construction company been paid?

(Objected to by plaintiff for the reason that the question calls for conclusion of law.)

Ans. Yes.

Cross 6th. How?

695 (Same objection for same reason.)

Ans. By taking up the indebtedness of the old company by the Delaware County Railroad Company. In other words, the directors of *of* the old company took the notes given to the subcontractors that had been taken up by the Delaware County Railroad Company from said company in payment of the note given by said railroad company to said construction company. The construction company, of which I was director, accepted those notes in payment of said note given by said railroad company. I do not recollect the form of the subscription to the new company, or whether there was more than one paper. At the time of the organization the members executed to the railroad company their promissory notes in payment for their subscription to stock. To the best of my knowledge, on the 19th day of January, 1875, thirty-three thousand and two hundred dollars of these notes, and the note of the railroad company, were received by me for the construction com-

696 pany in payment for the interest of the construction company in the Davenport and S't Paul Railroad at the same time the deed was delivered. I did for the construction company accept those notes in payment for the interest of the construction company in the Davenport and S't Paul Railroad. All of the various notes I have mentioned were promissory notes.

Redirect:

At the time F. B. Doolittle collected the *the* taxes and subscription for the Davenport and S't Paul Railroad Company, as assistant treasurer and collector of said company, he was treasurer of the Delaware R. R. Construction Company. Some of the money so collected by Doolit-

tle was paid to the Construction Company, but not all of it. Am certain not all of it. I did not know that the Railroad Company had taken up the notes given to the subcontractors until they were ready to exchange the said notes for their note. I was authorized by resolution of the board of directors of the construction company to take the
697 notes given by the construction company to the subcontractors, and held by the railroad company, in payment for their note. My reason for saying that the notes of thirty three thousand two hundred dollars, given by the members to the railroad company *to the railroad company* for their stock, were taken by me in part payment for the interest the construction company had in Davenport and S't Paul Railroad is because I was authorized so to do by resolution of the board of directors of the construction company. I did not know of a motion for a new trial being made in said matter at the time the sale was made. I thought the litigation was all over. I knew some time after that a motion for a new trial had been made. I might have known in January, A. D. 1875.

Recross:

In the various conversations I have had with members of the company or other parties, I have never had a doubt, or heard one expressed, as to the validity of the mechanic's lien, except from counsel for
698 plaintiff. The reason that the Delaware County Railroad Company was organized, as far as I know or have heard expressed, was that the old company under its articles of incorporation could not operate a railroad. I do not claim to know the motive of each individual member. I did not hear all the members express themselves.

Redirect.
(Signed) R. EDDY.

699 EXHIBIT D.

Certificate of sheriff's sale.

To whom it may concern:

I, Abner Dunham, sheriff of Delaware County, Iowa, hereby certify that by virtue of a writ of special execution, to me directed, dated February 17th, A.D. 1874, and issued out of the clerk's office of the circuit court of the State of Iowa in and for Delaware County, upon a judgment and decree rendered in said court on the 6th day of February, A. D. 1874, in favor of the Delaware Railroad Construction Company, and against the Davenport and S't Paul Railroad Company, for the sum of fifty-one thousand nine hundred and $\frac{54}{100}$ dollars debt and one hundred and twenty-one $\frac{30}{100}$ dollars cost, I did, on the 17th day of February, A. D. 1874, levy upon the following described property, to wit:

All that portion of the Davenport and S't Paul Railroad lying between the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of
700 way, the road-bed, the track, depot buildings, side tracks, and land on which the same are situated, and all fixtures connected with said grounds and buildings, and all the right, title, and interest of the said Davenport and S't Paul Railroad Company in and to the land upon which the said improvements are situated, as the property of the said Davenport and S't Paul Railroad Company, to satisfy the said special execution amounting to fifty-one thousand nine hundred and thirty $\frac{54}{100}$ dollars debt and one hundred and twenty-one $\frac{30}{100}$ costs, to-

gether with interest and accruing costs thereon; that I gave four weeks' notice of the time and place of selling said above-described property under said execution by posting up three notices thereof at three public places in said county, one of which was at the court-house in Delhi, where the last district court was held, and by causing two publications of said notice to be made in the Delhi Monitor, a newspaper printed at Delhi in said county, immediately before the time of sale. That in pur-
701 suance of the notice of sale aforesaid, in conformity to law and by virtue of said special execution, I did, on the 4th day of May, A. D. 1874, at 10 o'clock in the forenoon of said day, at the door of the court-house in Delhi, expose and offer the said property for sale at public auction, and R. Eddy, treas. of said plaintiff, in trust for said plaintiff, then and there bid the sum of fifty-three thousand and one hundred dollars for the same, and that being the highest and best bid offered for said property, the same was then and there * * * struck off and sold to the said R. Eddy, treas. of plaintiff, in trust for plaintiff, * * * * sum of $53,100.00 (53,100 dollars), who then and there paid the * * * of his bid to me in cash.

* * * * unless redemption is made within one year after the date of said sale according * * * the said R. Eddy, treas., in trust as aforesaid, his heirs or * * * will be entitled to a deed for the said property sold as aforesaid, and described as follows, to wit: All that portion of the Davenport and S't Paul Railroad lying between
702 the south line of Delaware County, Iowa, and the north line of said county, as the same is laid and operated, including the right of way, the road-bed, the track, depot buildings, side tracks, and land on which the same are situated, and all fixtures connected with said grounds and buildings, and all the right, title, and interest of the said Davenport and S't Paul Railrood Company, in and to the land upon which the said improvements are situated.

In witness whereof I have hereunnto set my hand this 4th day of May, A. D. 1874.

ABNER DUNHAM,
Sheriff of Delaware County, Iowa.

For value received I hereby assign to the Delaware County Railroad Company all my right, title, and interest to the within-described property and certificate, and all the right, title and interest of the Del. Railroad Construction Company thereto, this January 20th, 1875.

R. EDDY,
Treas., for the Del. Railroad Construction Company.

703 (Endorsed:) Certificate of sheriff's sale.. Sheriff of Delaware County to R. Eddy, treas. in trust for Del. R. Con. Co. Deed made to the Delaware Co. R. R. Co., May 10, 1875. Abner Dunham, sh'ff Del. Co., Iowa.

704 EXHIBIT E.

Know all men by these presents that I, Rensselaer Eddy, treasurer of the Delaware Railroad Construction Company, and trustee for said company of the following-described property, for the consideration of fifty-three thousand nine hundred and seventy-four dollars and seventy-three cents, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto the Delaware County Railroad Company the following-described property, to wit:

All that portion of the Davenport and S't Paul Railroad situated in

Delaware County, Iowa, being the part lying between the north and south line of said Delaware County, as said road is laid and operated, including the right of way, the road bed, the track, depot buildings, side tracks, and land on which the same are situated, and all fixtures connected with said grounds and buildings, and all the right, title, and interest conveyed or received by me in or to the land upon which said improvements are situated by virtue of a sale to me by the sheriff
705 of Delaware County, Iowa, on the 4th day of May, A. D. 1875, under an execution against the Davenport and S't Paul Railroad Company; and I sell and convey to said Delaware County Railroad Company all the interest in or to any property derived by me at said sale, both legal and equitable, to have and to hold unto itself and its grantees forever.

Witness my hand this 19th day of January, A. D. 1875.

RENSSELAER EDDY,
Treasurer and Trustee of the Delaware Railroad Construction Company.

STATE OF IOWA,
Delaware County, ss:

On this 19th day of January, A. D. 1875, before me, J. B. Satterlee, clerk of the district court of Delaware County, Iowa, personally appeared Rensselaer Eddy, treasurer and trustee of and for the Delaware Railroad Construction Company, to me personally known to be the identical person whose name is affixed to the foregoing deed as grantor, and acknowledged the same to be his free and voluntary act and
706 deed.

Witness my hand and official seal the date above written.

J. B. SATTERLEE,
Clerk of the District Court of Delaware County, Iowa.

On the back of said exhibit is endorsed the following:

Rensselaer Eddy, treasurer and trustee of Del. Railroad Construction Company, to Delaware County Railroad Company. Deed. Filed for record the 19th day of January, A. D. 1875, at 4 p. m., and recorded in book H of town lots, on page 419. H. C. Jackson, recorder. Entered for taxation January 19th, 1875. J. B. Baggs, county auditor.

707 HENRY HARGER is next produced as a witness on part of the plaintiff in said cause, being of lawful age and sound mind, and being by me first carefully examined, cautioned, and duly sworn on his corporal oath to testify the whole truth touching the matters in controversy in said civil cause, deposes as follows:

(It is agreed that the testimony of this witness be taken in nar'ative form, unless objection is made.)

My name is Henry Harger; my age is forty-three years; I reside at Delhi, Iowa; my occupation is abstracter; I am stockholder, treasurer, and director of the Delaware County Railroad Company, and have been since its organization. I do not know who drew the articles of incorporation of said company. I was present at the time of the organization of the company, and at the election of officers. I think I was present at the time the proposition was considered by the said company
708 to the Delaware Construction Company to purchase its interest in the Davenport and S't Paul Railroad. I think all the members of the company were present, but can't say certain. Judge Brayton was there. I do not know who prepared the proposition or who made it. I cannot tell whether Judge Brayton prepared it or not. I

do not remember that Judge Brayton took a very active part at that meeting; I can't remember the details; he was there and talked some. There has been three or four meetings of the board of directors. I cannot tell without looking at the record.

Witness examined the record, and says there has been four meetings of the board of directors. At the meetings of the board of directors the members of the company, other than the directors, were not generally present. I think there was a meeting of the company held just before the meeting of the board the first time, and I do not know but the two last times, but I think not. I can't be certain about the second time.

709 I think once or twice there was a meeting of the board when there was no meeting of the company. At the times when the board and the company met at the same time the action of the board might have been discussed by the company, but I do not know that it was. Judge Brayton was present at some of the meetings of the board of directors. The' asked M'r Brayton's advice about some things, some legal matters. I can't say whether Judge Brayton was present at all the meetings; he may have been. I think two and perhaps the three first were held at Judge Brayton's office. The last was *was* held at my office, and I do not know certain but next to the last was held there. I do not remember who drew up the notice of the name and object and nature of the corporation for publication. I do not know who proposed the publication. I do not know whether Judge Brayton was present at the time. I do not know who drew the deed from the sheriff to the railroad company in 1875. I paid recording fees on two papers. I do not remember if this deed was one of them, or what papers I paid on.

710 I left the papers with the recorder, and do not remember to have seen them since. I know about a deed twice recorded. I think the reason for the second recording was a defective acknowledgement; M'r Martin called my attention to it. I do not know whether any deeds or assignments have been made by or to the Delaware County Railroad Company without the advice of Judge Brayton. I do not know of my own knowledge of any deeds or assignments being made with his advice. I think I had no knowledge of the making of any deeds or assignments to the company until after they were made. I knew that the board have at some time asked M'r Brayton's advice, but can't tell when. I do not know that there has been a new trial granted to Denison. I know there is litigation, but I do not know what it is; I know the bondholders had something to do with it. I did not know when the bondholders came in; I cannot tell when I first heard of it. I knew they had a trial in court last summer. I can't tell whether I was in court at the January term, 1875. I was in court when Judge Grant was there;

711 can't tell whether it was in January. I do not know whether it was in May, 1875; don't think it was in June, 1875. I think I was a witness at that term of court.

I think I have attended all the meetings of the board of directors. I do not know that I have been particularly active. I think more of the business has been done by the president than by me. When my brother was alive he took more of an active part than I.

Whereupon the further taking of testimony is adjourned till March 17th, 1876, at nine o'clock a. m.

MARCH 17, 1876—9 o'clock a. m.

Taking of testimony is resumed.

Parties present by their counsel.

Henry Harger testifies as follows, to wit:

I think that all the work of taking the minutes of the proceedings of

the board of directors and transcribing them into the record was done by Charles Harger during his lifetime. I do not know what other work he did. I was recorder of Delaware County from 1867 till 1875.

712 I recorded several mortgages against the Davenport and S't Paul Railroad Company. I knew of all the mortgages recorded made by the Davenport and S't Paul Railroad Company to John Edgar Thompson and William Denizon, trustees, and all releases of the same that appears of record in Delaware County during my term of office. I was referee to try the case of the Delaware Railroad Construction Company vs. The Davenport and S't Paul Railroad Company in circuit court of Delaware County. I suppose I had all the papers in the cause. I do not know whether I read all the papers or not. I looked at all the papers that were brought up. What I mean by all that was brought up is all the papers refer'ed to on the hearing by counsel on either side. I cannot now recollect what particular papers I did examine. I knew who were the defendants at the time. I do not remember how the defendants were served. I suppose I knew the terms of the contract between the construction company and the railroad company at the time of the hearing. I do not remember whether the contract was be-

713 fore me, but think by reading the report it must have been. I think from looking at the report that Exhibits B & C, attached to plaintiff's petition in that case, were before me on the hearing, and I think I knew the contents of them at the time. I know of the purchase by the Delaware County Railroad Company of the interest of the Delaware Construction Company in the Davenport and S't Paul Railroad. There was no money paid at the time of the purchase as a consideration to my knowledge. I do not know that any money was ever paid by the Delaware County Railroad Company to the construction company as a consideration for that purchase. I think Warren A. Brayton became a member of the Delaware County Railroad Company on the 10th day of June, 1875, and on that day he paid for his stock. I make this last statement from the record. That was the first money received by me as treasurer of the Delaware County Railroad Company.

714 Cross-examined:

I do not remember so as to fix the time that the board of directors asked your (Brayton's) legal advice before you was employed as attorney by the company. I mean I do not know whether your advice was asked before that time or not. On the 10th day of June, A. D. 1875, the Delaware County Railroad Company paid twenty-nine hundred and seventy-nine dollars and sixty cents to J. B. Satterlee, clerk of circuit court of Delaware County, on a judgment of Westphial and Hines vs. Davenport and S't Paul Railroad Co. et al., and to redeem from a sale made in pursuance of said judgment 13th of July, 1874, being that part of that railroad lying north of the Ill. Central Railroad and south of the north line of Oneida Township, in Delaware County. I mean that the money was paid to redeem from the sale under that judgment.

Cross 1. Do you know that there was a valuable consideration

715 passed from the Delaware County Railroad Company to the Delaware Construction Company for the purchase of the railroad property?

(Plaintiff objects, for the reason that the question calls for a legal conclusion.)

Ans. I do; the consideration was promissory notes.

(Signed) HENRY HARGER.

RICHARD BOON is now called as a witness on part of the plaintiff, who is of lawful age and sound mind, and being by me carefully examined, cautioned, and duly sworn on his corporal oath to testify the whole truth touching the matters in controversy in said civil cause, deposes as follows, to wit:

My name is Richard Boon. I reside at Delaware, Delaware County, Iowa. My age is sixty-three years. My occupation is that of farmer. I am a stockholder in the Delaware Railroad Construction Com-
716 pany. I hold no office in that company. I am also a stockholder in the Delaware County Railroad Company; am a director in said company, and have been since its organization. I was never an officer in the construction company.

(1) I and M'r Martin were sub(2)contractors under the Construction (3) Company, and built bridges for (4) the Davenport and S't Paul Rail(5)road. I saw the contract (6) between the construction (7) company and the Davenport (8) and S't Paul Railroad Com(9)pany under which that work (10) was done before it was (11) sent to Davenport. Do not (12) recollect whether I ever saw (13) it afterwards or not. (14) I do not know, but I heard a report that a clause was added to the contract as follows: "All the money for the work hereinbefore specified to be paid by the citizens of Delaware County." I had a talk with Baldwin, the engineer, in regard to the matter, and told him if such a clause was insisted upon that they will be disappointed, as the citizens of Del-
aware County could not do it; and he said he had seen M'r Hiram
717 Price, that he had met with the executive committee the night before, and that Price said that he did not expect them to do any such thing.

The above answer, commencing at the line marked 14, was given in response to the following question: Was that clause in the contract much talked about among the members of the company?

(Plaintiff objects to the answer, for the reason that it does not respond to the question and is hearsay evidence.)

I had heard of that clause at that time. I do not remember any particular conversation with any member of the construction company, but presume I have talked with some of them about it. It was the talk that such was the case. I knew that the clause was afterwards stricken out. I was present at the time the agreement was made to strike it out, in consideration of the sum of two thousand dollars paid by the con-
718 struction company. The agreement was made by the executive committee of both companies before the resolution was made by the directors of the railroad company authorizing it to be stricken out, and before the matter had been accepted by the construction company. I think I was present at the time the resolution was passed by the Delaware County Railroad Company authorizing the purchase of the interest of the construction company in the Davenport and S't Paul Railroad. I think all the members of the construction company were present at that time except M'r Doolittle, but I am not sure. I think Judge Brayton was present. I guess Judge Brayton drew the resolution for purchase, but can't say positively. I do not know that Judge Brayton took a more active part than the rest; I mean the rest of the company. I do not know whether Judge Brayton took as active a part as any member of the board of directors or not. I do not know whether Judge Brayton gave the board of directors any legal advice or not.
719 I do not know whether I had any conversation with Judge Brayton about the legal right of the construction company before the

purchase; I don't think I did. I can't tell how many meetings of the board of directors of the railroad company there has been. I don't think I have been present at all of them. I think I was present at the time of the purchase. I do not remember whether Judge Brayton was present; I guess he was. I do not know who drew the assignment of the sheriff's certificate to the railroad company or the deed to the company. I do not know who drew the deed from the sheriff to the railroad company; I did not. I do not know whether M'r Thorpe did. I do know whether Charles Harger did. I did not draw the notice of the name, object, and nature of the company, and do not know who did, for publication.

Int. Did you not know before that purchase that the Davenport and S't Paul Railroad was mortgaged?

I expected it was. I heard it was. I never saw the original mortgage.

720 Int. What was the reason and purpose of the organization of the new company on part of the members?

Ans. As far as I am concerned it was to make money. I could get a little more interest in the new company than I had in the old. I knew that there was a suit brought by the Delaware Construction Company to foreclose a mechanic's lien on the Davenport and S't Paul Railroad. I might have known that the mortgagees were made parties to that suit. I don't know whether I did.

Cross-examined:

I understood that the meeting I refer'ed to at which the agreement was made to abrogate the clause in the contract of the construction company, heretofore refer'ed to, was called by the board of directors of both companies. I had no knowledge of the existence of a mortgage on the railroad, except by general rumor. I knew that the work was performed by the construction company under that contract.

720½ There are four stations on the Davenport and S't Paul Railroad in this county. I have an elevator on the Davenport and S't Paul Railroad, and also one on the Illinois Central in Delaware County. I have been accustomed to transact business with both roads. I have been some acquainted with railroad operations for a number of years.

Int. What, in your opinion, would be the fair rental value of that portion of the Davenport and S't Paul Railroad in Delaware County from the 5th day of May, 1875?

(Objected to by plaintiffs as not a cross-examination; as calling for the mere opinion of the witness and not facts. And further, for that the defendants have not laid the proper foundation for the introduction of such testimony.)

Ans. I should think it ought to rent for twenty-five hundred or three thousand dollars per month.

721 Redirect:

I am not posted as to positive figures about the earnings of the Davenport and S't Paul Railroad. I do not know how much they do earn. I know that some months there have been fifty car loads of lumber transferred at Delaware when the road has not been doing as much business as they have been doing this fall. The basis of my opinion is the business I see done at Delaware. I have no statistics. I live where I see every train on both roads when I am out of doors. I do not know what profit the road makes on the cars transferred; most of them go north; a few of them have come to Delhi.

Recross examined:

I never had any doubt about the validity of the mechanics' lien of the Delaware Construction Company on the Davenport and S't Paul Railroad, nor of the validity of the proceedings in court in relation thereto. I never heard any member of the construction company express any doubt about the validity of said lien or proceedings.

722 Redirect examination:

I did not suppose the mortgagees had any rights at the time of the filing of the lien or bringing the suit.

(S'g'd) RICHARD BOON.

F. B. DOOLITTLE is next produced as a witness on part of plaintiff in said cause, who is of lawful age and sound mind, and being by me carefully examined, cautioned, and duly sworn on his corporal oath to testify the whole truth touching the matters in controversy in said civil cause, deposes as follows, to wit:

My name is F. B. Doolittle; my age is fifty years; I reside at Delhi, Iowa; my present occupation is manufacturer; I have been a stockholder of the Delaware Railroad Construction Company since its organization, and treasurer and director of said company from its organization till December, A. D. 1873. I was assistant treasurer (I think I was director of the Davenport and S't Paul R. R. since its organization
723 till this time, except the year 1871) of the Davenport and S't Paul Railroad Company, from June 21st, 1870, till the present time. I have attended two annual meetings of the construction company since December 1873. The last meeting I attended was the annual meeting of the company in December, 1875. I have not attended any meeting of the board of directors since December, 1873. I was not present when the proposition was made by the Delaware County Railroad Company to purchase the interest of the construction company in the Davenport and S't Paul Railroad. The matter of the sale was mentioned to me by M'r Brayton; I said I would consider the matter, and that is all I knew about it till after it was done. The conversation was had some time before the sale, perhaps a week or ten days; some one talked with me, I think it was Brayton, and made this point, that the construction company under its charter could not operate a railroad. I am not a member of the Delaware County Railroad Company. There has no money or other valuable consideration been *been*
724 paid to me for my interest in the construction company since said sale. The amount of taxes and subscriptions collected by the Davenport and S't Paul Railroad Company in Delaware County was not as much as was paid to the construction company by the railroad company. The railroad company paid the construction company one hundred and thirty-nine thousand one hundred eighty-nine and $\frac{46}{100}$ dollars, seventy thousand of which was paid out of funds not collected in Delaware County; the ballance was paid from funds collected in Delaware County. There is about twelve thousand dollars of taxes and subscription yet uncollected. Between eight and nine thousand of the above is in tax in South Fork Township, which the treasurer has been enjoined from collecting. The injunction suit was between the tax-payers and the Davenport and S't Paul Railroad Company.

725 Cross-examined:

I collected the taxes and subscriptions in Delaware County by the authority of and for the Davenport and S't Paul Railroad Company,

as assistant treasurer of that company. I have the authority given me by the company so to do. Witness produces a paper, a copy of which is hereto attached and marked "Exhibit F."

I was present at a meeting of the board of directors of the Davenport and S't Paul Railroad Company, at the time the resolution was passed confirming the authority, to wit, the 21st day of June, A. D. 1870. I disbursed the taxes and subscriptions I collected in this county under the direction of the railroad officials. I do not now recollect who the executive committee were at the time I got my direction for disbursing the funds. I did know at the time. I had verbal directions from time to time from the president, from the time of my first appointment. I had written directions which I now produce. Said directions are offered
726 in evidence by defendant, which are hereto attached and marked "Exhibit G." I know of a meeting of the executive committee of the Davenport and S't Paul Railroad Company, and the executive committee of the Delaware Railroad Construction Company, at Monticello, to settle some matters of difference betwen said companies. That meeting was on the fourth day of June, A. D. 1872, or before; I think it was on that day, but it may have been a day or two before.

Said committees met there to adjust a difference of opinion as to a clause inserted in the contract between the Davenport and S't Paul Railroad Company and the Delaware Construction Company by M'r Price, after the signatures of the officers of the Delaware Railroad Construction Company.

It was agreed there by the two committees that that clause be cancelled, and the Delaware Railroad Construction Company agreed to credit the Davenport and S't Paul Railroad Company two thousand dollars at such time as the railroad company had paid the construction company the full amount to be due them on their contract for build-
727 ing the railroad through Delaware County. The said two thousand dollars to be credited at final settlement.

That agreement was afterwards carried out by the two companies. The construction company did comply with their contract. They commenced work under that contract in September, A. D. 1870. They furnished the materials and completed the work under that contract according to its terms. The work was completed in 1872, I think in October. E. Baldwin was the engineer of the railroad company. The estimates were made by the division engineer, and received by M'r Baldwin, and M'r Baldwin made the final estimate, including all former estimates.

Redirect:

I think M'r Boon was director of the Davenport and S't Paul Railroad Company in 1869 & 1870. I cannot say whether Judge Brayton, in the conversation referred to, gave as a reason for the formation of a new company that the construction company could not operate a railroad under its charter or not, but he left me with the impression that that was the reason for the suggestion about the formation of the new company.

(S'g'd) F. B. DOOLITTLE.

728 F. B. DOOLITTLE, recalled by defendant March 18, 1876, testifies as follows, to wit:

The Davenport and S't Paul Railroad Company brought all the suits that have been brought for the collection of stock in Delaware County since the contract between the Delaware Construction Company and

the Davenport and S't Paul Railroad Company was executed and *and* work commenced under said contract. Probably forty suits in all have been brought. A part of them were brought before the clause was stricken out of the contract.

Within a few months after the work commenced under the contract suits were commenced by the Davenport and S't Paul Railroad Company for the collection of subscription to stock in Delaware County.

(S'g'd) F. B. DOOLITTLE.

729 EXHIBIT F.

Resolved, That F. B. Doolittle be appointed ass't treasurer to receive the money paid by stockholders north of Wyoming, and pay out the same under the direction of the treasurer, and also to act as the agent of the company in procuring the right of way and depot grounds between Wyoming and the north line of Delaware County, under direction of the executive committee.

I hereby certify the above and foregoing to be a correct copy of an extract from the minutes of the proceedings of the board of directors of the Davenport and S't Paul Railroad Company, passed this 21st of June, 1870.

Witness my hand and the seal of said R. R. Co. the day and year above written.

[SEAL.] W. H. PRICE, *Sec't'y.*

730 EXHIBIT G.

Resolved, That F. B. Doolittle, collector of the D and S't P. R. R. Co., be, and he is hereby, directed to pay, out of the funds collected by him in Delaware County, Iowa, belonging to said company, the salaries and necessary traveling expenses of himself and the division engineers for said county; also to pay for right of way and expenses for the same; and to pay to the Delaware R. R. Construction Company eighty (80) per cent. on the estimates of the chief engineer for work done by said Delaware R. R. Construction Co. on construction of the D. and S't P. R. R.

Resolved, That the compensation of F. B. Doolittle be, and hereby is, increased in the sum of twenty-five ($25) dollars per month from July 1st, 1870, as per his request.

I hereby certify the above to be true and correct copies of resolutions passed by the executive committee of the board of directors of the D. and S't P. R. R. Co., held at the office of said company Dec'r 28th, 1871.

Witness my hand and the seal of said company this 28th day of Dec'r, A. D. 1871.

[SEAL.] W. H. PRICE, *Secretary.*

731 Whereupon the further taking of testimony is adjourned till March 18th, 1876, at eight o'clock a. m.

MARCH 18TH, 1876—8 o'clock a. m.

The taking of the testimony is resumed; when A. E. MARTIN is produced as a witness on part of the plaintiff in said cause, who is of lawful age and sound mind, and being by me carefully examined, cautioned, and duly sworn on his corporal oath to testify the whole truth touching the matters in controversy in said civil cause, deposes as follows, to wit:

My name is A. E. Martin; I reside at Delhi, Delaware County, Iowa; my age is 43 years; my last occupation was contractor. I have been a stockholder in the Delaware Construction Company since its organization, and a director and secretary of the company since December, A. D. 1870. I am a member of the Delaware County Railroad Company; have been secretary and director in said company, I think, since the 10th of July, 1875. I do not know who drew the deed from the sheriff of
732 Delaware County to the Delaware County Railroad Company. (Deed is shown to witness.) Witness says he thinks he knows whose handwriting the body of the deed is in. I think the deed is in the handwriting of M'r's Dunham, the sheriff's wife. The second acknowledgment on the deed is in my handwriting. I found that the acknowledgement was defective. I found it in copying the deed for some purpose. I think I talked with M'r Brayton about the matter, and also with Peters and Heath, and Henry Harger, the old recorder. I do not know whether I have been present at all the meetings of the board of directors or not; think I have been at all the meetings since I have been director.

I was present at the time the offer was made for the purchase of the interest of the construction company in the railroad. I have none of those notes given by the railroad company to the construction company to take up the notes of the railroad company held by the construction company. I do not think any of them are in existence. I do not
733 think any of the notes given by the individual members of the Delaware County Railroad Company to the company in payment of their subscription to the stock of the company are in existence. I think I first knew of the granting of the new trial in the spring of the year. I have here the record of the proceedings of the board of directors of the Delaware Railroad Construction Company authorizing R. Eddy to execute a deed to the Delaware County Railroad Company upon the receipt of the consideration for the purchase of the Delaware Railroad Construction Company's interest in the Davenport and S't Paul Railroad, according to the terms of the proposition of the Delaware County Railroad Company for purchase, and the acceptance of the same by the Delaware Railroad Construction Company.

(A copy of the record of said proceedings is hereto attached and marked "Exhibit H." The record of the proceedings of the Delaware Railroad Construction Company, by its board of directors, relating to the sale of its interest in the Davenport and S't Paul Railroad to the Delaware County Railroad Company, is offered in evidence, a copy of which is hereto attached and marked "Exhibit I.")

734 I do not know of any other record of the Delaware Railroad Construction Company, by its board of directors, authorizing R. Eddy to receive any consideration from the Delaware County Railroad Company for said purchase.

(Plaintiff now offers in evidence the record of the proceedings of the board of directors of the construction company, authorizing R. Eddy, treasurer, to receive the notes of the construction company in exchange for the note of the Delaware County Railroad Company to the amount of said note, a copy of which is hereto attached and marked "Exhibit J,")

Witness says this is the only record, so far as he knows, authorizing R. Eddy to make the exchange of the notes of the railroad company for the notes of the construction company.

Cross-examination:

The promissory notes given by the individual members of the Delaware County Railroad Company to the company, and by it to the construction company in part payment for the railroad, became due
735 in May, 1875, and were taken up by the makers, who executed new notes to the construction company in exchange for said notes, and the time was extended three months. These last notes became past due, and there was a payment made on them, and new notes given for the ballance, which the construction company still hold.

All, of the notes above mentioned were in form of ordinary promissory notes.

(Witness offers in evidence a form *in* which he says is substantially the form used for all the notes, which form is hereto attached and marked "Exhibit K.")

After the note given by the railroad company to the construction company became due, the board of directors of the railroad company authorized me to purchase enough of the indebtedness of the construction company to pay the note owing by the railroad company to the construction company. The authority given me was verbal. I went and purchased the notes of the construction company of the holders
736 of the same, enough in amount to equal the amount of the note of the railroad company to the construction company. I bought the notes in this wise: I ascertained the amount that was due the holders of the notes of the construction company. And the officers of the railroad company executed the notes of the company of like amount, and the holders of the construction companie's notes accepted the railroad companie's notes in payment for the notes of the construction company held by them. The railroad company took the notes I purchased for them and passed them over to M'r Eddy in payment for the note of the railroad company held by the construction company. I think the exchange was made with M'r Eddy the last days of June or first days of July, 1875.

The members of the Delaware County Railroad Company subscribed for stock in the company on the 18th of January, A. D. 1875, and afterwards on the same day gave their notes in payment of the same.

I have worked considerable at constructing railroads and been
737 somewhat familiar with the operations of the same. I think that the D. and S't P. Railroad, in Delaware County, is less valuable now than on the 4th of May last, by reason of the ties and bridges decaying and *and* the iron being worn out. The amount would be at the rate of one-seventh of the cost of the ties per annum, and one tenth of the cost of the bridges & sluices per annum, and one-tenth of the cost of the iron per annum. The deterioration on the ties is 4,426 dollars since the fifth of May last, and on the culverts 667 dollars; on the bridges, 2,000 dollars, and on the iron, 14,583 dollars. The deterioration on the ties is 442 dollars per month; on the culverts, 67 dollars per month; on bridges, 200 dollars per month, and on iron, 1,458 dollars per month.

Int. What is the rental value of the property purchased by the Delaware County Railroad Company of the Delaware Railroad Construction Company, being that part of the Davenport and S't Paul Railroad lying in Delaware County, from the fifth day of May, 1875?

738 (Objected to by plainiff as not a cross-examination; as calling for the mere opinion of the witness and not facts. And further for that the defendants have not laid the proper foundation for the introduction of such testimony.)

Ans. Two thousand dollars per month. I base my judgment upon

this: that would be only the interest upon the value of the road at six per cent., and further, that the Illinois Central Railroad would pay at least fifteen hundred dollars per month, and maybe more. I had a talk with an Illinois Central man, and he said their company would be glad to rent the road. I asked him what they would be willing to pay, and he said 1,500 dollars per month, and maybe more. I think the road would rent for 2,000 dollars per month, and the lessee would keep up the repairs.

(S'g'd) A. E. MARTIN

739 EXHIBIT H.

Moved and carried, That M'r R. Eddy, the treasurer for the Delaware R. R. Con. Co., be directed and instructed to execute a deed to the Delaware County Railroad Co., of that portion of the Dav. and S't P. R. R. lying in Delaware County, purchased by him on the 4th of May, 1874, which was sold on execution against the D. and S't P. R. R. upon the receipt of the consideration for the purchase of said property, according to the terms of the contract this day made with said Delaware County R. R. Co.

740 EXHIBIT I.

DELHI, *Jan'y* 18, 1875.

At a meeting of the board of directors of the Delaware R. R. Con. Co., on call of the sec't'y and order of the president, all the members being present, the meeting was called to order by the president; there was a proposition received from the Delaware County Railroad Company to purchase the interest of the Del. R. R. Con. Co. in and to all that part of the D. and S't P. R. R. lying in Delaware County.

Copy of proposition.

To the board of directors of the Delaware Railroad Construction Company:

The Delaware County Railroad Company hereby offers to purchase the interest of the Delaware Railroad Construction Company in and to that portion of the Davenport and S't Paul Railroad lying within the limits of Delaware County, Iowa, for the sum of fifty-three thousand nine hundred and seventy-four dollars and seventy-three cents, of which thirty-three thousand and two hundred dollars to be paid down, and the remainder on the 5th day of May, 1875.

J. M. HOLBROOK,
President Delaware County R. R. Co.
CHA'S HARGER,
Secretary Del. Co. R. R. Co.

741 Which proposition, on motion of A. E. Martin, was accepted.

Copy of acceptance.

DELHI, IOWA, *Jan'y* 18, 1875.

The Delaware Railroad Construction Company accepts the foregoing proposition on the 18th day of January, A. D. 1875.

C. F. FLEMMING,
President Delaware R. R. Con. Co.
A. E. MARTIN,
Sec't'y Del. R. R. Con. Co.
R. EDDY,
Treasurer Del. R. R. Con. Co.

742 EXHIBIT J.

DELHI, *June 6th*, 1875.

Board met by appointment at the office of J. M. Brayton, and it was resolved that the treasurer be authorized to receive all notes given by the Del. R. R. Con. Co., presented to *to* him by the treasurer of the Delaware County R. R. Co., in payment of its indebtedness to the Del. R. R. Con. Co.

The above resolution was unanimously adopted.

Board adjourned.

(S'g'd) A. E. MARTIN, *Sec'ty.*

743 EXHIBIT K.

$5,500.00.] DELHI, *Jan'y 18th*, 1875.

On or before the 5th day of May, 1875, for value received, I promise to pay to the Delaware County Railroad Company, or order, the sum of five thousand five hundred dollars, with interest thereon from date at the rate of ten per cent. per annum.

(Signed)

744 I do hereby certify that the foregoing depositions of J. M. Holbrook, Henry Harger, A. E. Martin, F. B. Doolittle, R. Eddy, and Richard Boon, were when taken then and there reduced to writing by me, in the presence of said deponants, and by them respectively subscribed in my presence, after having been so reduced to writing. I further certify that the reason for taking said depositions was and is, and the fact was and is, that all of said deponants live and reside in the county of Delaware and State of Iowa, and a distance of more than one hundred miles from the city of Des Moines, where said suit is pending and to be tried. I further certify that it being impracticable for me to deliver said depositions with my own hand to the court for which they were taken, I have retained the same for the purpose of being sealed up by me and transmitted by the U. S. mail to said court for which they were taken, and to remain under my seal until *until* there opened.

I further certify that I am not counsel nor attorney to either of the parties to this suit, nor interested in the event of this
745 cause.

I further certify that the fee for taking said depositions, amounting to twenty-seven dollars, has been paid me by Grant and Smith, attorneys for Lewis A. Meyer and W'm Denison, plaintiffs. I further certify that the witnesses herein are entitled to fees as follows:

A. E. Martin, three days' attendance	$4 50
F. B. Doolittle, two " "	3 00
J. M. Holbrook, two " "	3 00
R. Eddy, one " "	1 50
Henry Harger, one " "	1 50
Richard Boon, one day's attendance and four miles traveling	1 90

Which said fees are not paid.

J. BAGGS,
Commissioner aforesaid.

(Endorsed:) Moses DeWitt Loomis et al. vs. Davenport and S't Paul Railroad Company et al. Depositions on part of Lewis H. Meyer and

W'm Denison, trustees, plaintiffs. Filed May 13, 1876. E. R. Mason, clerk.

746 In the circuit court of the United States for the district of Iowa.

MOSES DEWITT LOOMIS ET AL
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company et al.

STATE OF IOWA,
Delaware County, ss :

Be it remembered that on this 17th day of April, A. D. 1876, at three o'clock p. m. of said day, at the village of Delhi, in said county, before me, a commissioner appointed by the circuit court of the United States within and for the district of Iowa, under and by virtue of the annexed notice, the following named witnesses were produced on part defendants, viz, A. E. Martin and F. B. Doolittle, the testimony of said witnesses being alleged to be material and necessary in said cause.

And the said witnesses being of lawful age and sound mind, and being by me first carefully examined, cautioned, and duly sworn,
747 on their respective corporal oaths, to testify the whole truth touching the matters in controversy in said civil cause, respectively depose and say as follows:

J. M. Brayton, esq., appears on part of defendants and L. M. Fisher, esq., appears on part of plaintiffs.

When said A. E. MARTIN is produced as a witness on part of defendant and deposes as *as* follows:

My name is A. E. Martin; I reside at Anamosa, Iowa; my age is 43 years; my occupation is warden of the additional penetentiary, at Anamosa; I gave testimony in this case before J. B. Boggs, examiner, in March, 1876. I testified at that time in relation to a meeting of the executive committee of the Delaware Railroad Construction Company and the Davenport and S't Paul Railroad Company, at Montecello, Iowa; that meeting was on the third day of June, 1872, between the hours of one and two o'clock p. m. I am positive of the day; one thing that makes me positive that it was that day is that I made a memorandum of expenses on that day, at Montecello, in my diary. It was
748 on Monday. On that same day when we arrived there I registered the names of our party in the hotel register, viz: Myself, F. B. Dolittle, R. Boon, and R. Eddy. Another circumstance makes me positive is, that S. Denton went down with us at the time to see M'r French, to try and get a contract from him, and his, Denton's, name appears on the register of the same date.

Ques. Have you the hotel register in you' possession?

(Plaintiff objects to witness answering the question for the *the* reason that the register is not properly identified and the witness is not the proper party to identify it.)

Ans. I have. From looking at the register I can say positively I know that it was the day we were there. The two committees made an agreement on that day to strike that clause from the contract
749 between the Davenport and S't Paul Railroad Company and the Delaware Railroad Construction Company which was inserted by Hiram Price after the officers of the construction company had signed said contract. The agreement was that said clause should be stricken

out and that the construction company should at final settlement allow or pay to *to* the railroad company two thousand dollars. I think the agreement was in writing; am quite sure it was.

(Plaintiff now objects to all the foregoing oral evidence in relation to said agreement, and moves that the same be stricken out as not being the best evidence.)

I have no copy of that agreement in my possession. I do not know whether I ever had. If I ever had, it is lost. I have searched for it and cannot find it. It was agreed that M'r French was to have
750 a proper resolution spread upon the record of the railroad company to carry the agreement into effect, and a copy of said record was to be sent to our company, which was to be spread upon the record of the construction company and the construction company were to adopt it and spread a proper resolution upon their record to give the agreement effect.

Cross-examined:

The executive committee of the construction company were all present. I do not remember of the interest of the railroad company being represented by any one else than George H. French. The members of the executive committee of the Delaware Railroad Construction Company were F. B. Doolittle, R. Eddy, and myself. The only member that I remember of representing the railroad company was Geo. H. French. I do not know now who constituted the executive committee of
751 the railroad company. I knew French was one of them. I knew there was such a thing as an executive committee for the railroad company, and French was one of them. I think there was three or five of the members. I don't think there was more. I do not know what authority M'r French had to represent the company. The agreement was that the executive committee of the board of directors of the railroad company were to pass a resolution striking said clause from the contract. The meeting at Monticello was for the purpose of making an agreement to strike that clause from the contract. I am certain that the 3rd day of June was the day, and that Geo. H. French was there. I knew it was that day.

(S'g'd) A. E. MARTIN.

752, 753 F. B. DOOLITTLE is next produced as a witness on part of defendant and testifies as follows, to wit:

My name is F. B. Doolittle. My age is fifty years. I reside in Delhi, Delaware County, Iowa. I testified in this case in the month of March, 1876, before J. B. Boggs, commissioner. A short time previous to the time that the contract was executed between the Davenport and S't Paul Railroad Company and the Delaware Railroad Construction Company for grading, bridging, and tieing the road through Delaware County, I went to Davenport at the instance of the Delaware Railroad Construction Company to make a contract with M'r Price, the president of the railroad company, for grading, bridging, and tieing the Davenport and S't Paul Railroad through Delaware County. I made a verbal agreement for a contract with him the same as our written contract excepting the clause that follows the signatures of the officers of the con
754, 755 struction company. I submitted the same to the construction company; the company then had duplicate copies of a contract drawn in accordance with the agreement, which were signed by the officers of the construction company, and then both were sent to M'r Price. According to a previous understanding he was to sign both and

return one to the construction company. He returned one signed, but above his signature and below the *the* signatures of the officers of the construction company was inserted the clause that there appears. That was the contract under which the work was done.

(Plaintiffs objected to all the foregoing testimony as incompetent and immaterial.)

Some time in the early part of the year 1872 there was a difference of opinion arose as to the construction to be given to that clause between the two companies. In the latter part of May, 1872, I was in Davenport, and had a meeting with the executive committee of
756,757 the D. and S't P. R. R. Company at which the question of the construction of said clause was discussed. A proposition was then made to me that if the construction company would credit the R. R. company two thousand dollars, they would strike out said clause.

(Plaintiff objects to all the foregoing evidence as incompe'nt and immaterial.)

I said I was not authorized to make an agreement, but would recommend our company to accept their proposition. And if they would appoint a time and place, I would have the officers of the construction company meet them and close a bargain, if they were disposed to. They appointed Monticello as the place and the third day of June, 1872, as the time.

(Plaintiff objects to the foregoing testimony for same reason as before.)

A meeting was held by the officers of the two companies at that time and place. M'r French then and there made the same proposition, which was agreed to by the officers of the construction company.
758, 759 I think the agreement was reduced to writing. My recollection is that M'r Martin took the agreement. It might have been M'r Eddy or myself. M'r Eddy was president of the construction company. I am positive that the time of the meeting at Montecello was on the 3d day of June, A. D. 1872. The reason I am positive is, I refer to my diary for that year and find an entry made of the time of the meeting. On the 25th of May, 1872, I was in Davenport, and at that time I made in my diary the entry under the date of the 3d of June in order that my attention would be called to it when that time should arrive. It was agreed then that the executive committees of both companies should pass proper resolutions approving the agreement and spread it upon the record of both companies.

(Plaintiffs objected to the admission of parol testimony as to said agreement as not the best evidence.)

760 M'r Price was president of the R. R. company during the year 1870, and in the year 1871, up to about the first of September, according to my recollection. I was acquainted with the general condition of the R. R. on the 4th of May, 1874, and am now; it is less valuable now than at that time. It is less valuable by reason of ties and bridges decaying and the iron being worn.

(The above evidence is objected to by plaintiff as irrelevant and immaterial, and that there is no sufficient basis for the introduction of such testimony.)

I should estimate the deter'oration to be 25.00 dollars per month.

(Objected to by plaintiff for the same reason as above.)

It was never claimed by either company that the construction
761 company had anything to do with the collection of the subscription in Delaware County.

Cross-examined:

It was claimed by the railroad company that the construction company should have only what could be collected from the subscriptions in Delaware County for the work done in Delaware County. The construction company held otherwise. The object of the meeting at the Montecello was to adjust this difference of opinion. My recollection is that there were five members of the executive committee, three of whom were present at the meeting in Davenport, spoken of by me in my direct testimony. M'r French was present at the meeting at Montecello. There may have been another member, but can't say positively. M'r French was, at the meeting in Davenport, authorized to arrange matters on part of the R. R. company at Montecello. The agree-
762 ment that was entered into at Montecello was afterwards carried out.

I have a general knowledge of the condition of the R. R. from seeing it, riding over it, and having been concerned in constructing it. My knowledge is general. I have no particular knowledge of the condition of the road in 1875; I mean to say that I have not investigated in particular; but I have a general knowledge of the road, and I know that it is a fact that ties, bridges, and buildings decay by the lapse of time, and that iron wears out. When I speak of the depreciation I mean the natural wear and tear of the road. I do not know of any particular failure of the present management to keep the road in repair; I do not know of their renewing any ties or bridges. I do not think the time has yet come for that. It is possible that they may have made renewals, but don't think they have, except to keep the bank in repair; I think they have done that. I arrive at my estimate of
763 $25.00 per month of deterioration in this way: I estimate the value of the road at $10,000 per mile; that the road will need renewing at from seven to ten years from its construction. I have examined the iron to some extent, and find that it is being worn out very fast.

A late hour having arrived, the further taking of testimony is adjourned till to-morrow morning at 8 o'clock.

APRIL 18TH, 1876—8 o'clock a. m.

The examination of witness Doolittle is continued.
Counsel for both parties were present.

Re-examined by defendants' counsel:

The first I knew that the R. R. company claimed the construction company were only to have for pay for the work the subscriptions that could be collected from the citizens of Delaware County was in the latter part of the year 1871, and they never claimed that the construction company had anything to do about collecting said subscrip-
764 tions. I have made diligent search for the agreement made at Montecello and cannot find it. I am confident that M'r Martin took the agreement at the time of the meeting, and I never had it since. I know I have not got it.

Recross-examination:

I cannot give the month in 1871 when the difference of opinion arose, but it was in the latter part of the year. That is about the time I first knew of the difference in opinion. I do not know what opinion the officers of said company held before that time. The agreement at Montecello was that the construction company were to credit the R. R. com-

pany $2,000 on final settlement, and that the clause be stricken out; and there was an understanding that proper resolutions should be spread upon the record of both companies to give the agreement effect.

(S'g'd) F. B. DOOLITTLE.

765 EXHIBIT A.

It is admitted by counsel, in the presence of the commissioner, that R. Eddy would testify as follows:

That he was present at the meeting referred to in the testimony in this cause, held at Montecello; that the agreement there made was reduced to writing; that said agreement is not and has not been in his possession; and that said Eddy would further testify that he does not know where said agreement is.

Dated this 17 day of April, 1876.

(S'g'd) L. M. FISHER,
Att'y for Meyer & Dennison.

(") J. M. BRAYTON,
For Del. Co. R. R. Company and Del. R. R. Construction Co.

(End.:) Filed before me April 17, 1876. (S'g'd) J. B. Boggs, commissioner.

766 I do hereby certify that the foregoing depositions of A. E. Martin and F. B. Doolittle were, when taken, then and there reduced to writing by me in the presence of said deponants, and by them each respectively subscribed in my presence, after having been so reduced to writing and carefully read over to me.

I further certify that the reason for taking said depositions was and is, and the fact was and is, that both said deponants live and reside at a distance of more than one hundred miles from the city of Des Moines, where said suit is pending and to be tried, said Martin residing at Anamosa, Jones County, Iowa, and said Doolittle at Delhi, Delaware County, Iowa.

I further certify that, it being impracticable for me to deliver said depositions with my own hand to the court for which they were taken, I have retained the same for the purpose of being sealed up by me and transmitted by the U. S. mail to said court for which they were
767 taken, and remain under my seal until there opened.

I further certify that I am not counsel nor attorney to either of the parties in said suit, nor interested in the event of this cause.

I further certify that the fee for taking said depositions, amounting to four and $\frac{90}{100}$ dollars, has been paid me by J. M. Brayton, the attorney for the defendants.

I further certify that the stipulation as to the evidence that R. Eddy would give (marked "Exhibit A") was admitted by agreement, and the presence of said witness waived.

I further certify that the witnesses herein are entitled to fees as follows:

F. B. Doolittle, two days $3 00
A. E. Martin, one day, 1.50, & 27 miles, $2\frac{76}{100}$ 4 20

Said witness-fees are not paid.

(S'g'd) J. B. BOGGS,
Commissioner as aforesaid.

768 In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS ET AL.
vs.
THE DAVENPORT AND S'T PAUL RAILROAD Company et al.

To the plaintiff Lewis H. Meyer and William Dennison, trustees, and Grant & Smith, their solicitors and counsel:

You will please take notice that F. B. Doolittle and Ancil E. Martin, necessary witnesses on behalf of the following defendants in said cause, to wit, the Delaware County Railroad Company and the Delaware Railroad Construction Company, living at Delhi, in the county of Delaware and State of Iowa, a greater distance than one hundred miles from the the city of Des Moines, the place of trial of said cause, will be examined de bene esse on the part of the said defendants above named, before J. B. Boggs, esq., a commissioner duly appointed by the circuit
769 court of the United States for the district of Iowa, by virtue of the act entitled "An act for the more convenient taking of affidavits and bail in civil causes," at his office in Delhi, in Delaware County, Iowa, on the seventeenth (17) day of April, A. D. 1876, commencing at three o'clock p. m. of that day, or before some other officer authorized by law to take such depositions de bene esse, and at which time and place you are notified to be present to attend upon the taking of the depositions of said witnesses, and for the purpose of cross-examination if you desire.

J. M. BRAYTON,
Solicitor and Counsel for the Delaware County Railroad Company and the Delaware Railroad Construction Company.

We hereby acknowledge that the above notice has been duly served upon us in the city of Davenport, Iowa, on this fifth day of April, A. D. 1876.

GRANT AND SMITH,
Sol's for Compl'ts.

770 (Endorsed:) Moses De Witt Loomis et al. vs. the Davenport and S't Paul Railroad Company et al. Depositions on part of the Delaware Railroad Construction Company and the Delaware County Railroad Company, defendants. Filed May 13, 1876. E. R. Mason, clerk.

771 Deposition of witness produced, sworn, and examined in pursuance of the annexed notice, at Davenport, in the county of Scott and State and district of Iowa, before me, a United States commissioner for the district of Iowa, in a certain action now pending in the circuit court of the United States for the district of Iowa, wherein Moses DeWitt Loomis and others are plaintiff, and the Davenport & S't Paul Railroad Company and others are defendants, on behalf of Myer & Dennison, parties plaintiff.

772 HIRAM PRICE, being produced and sworn on behalf of plaintiffs, deposed as follows:

My name is Hiram Price; age, sixty-two years; residence, Davenport, Iowa, and occupation, nothing in particular.

I was president of the Davenport & S't Paul Railroad Company. I

took the presidency in the fall of 1869, and continued until the fall of 1871. I think I left the road in October, 1871.

I made a contract with the Delaware Railroad Construction Company for the bridging, tieing, and grading the Davenport & S't Paul Railroad through Delaware County, Iowa. I think I made the contract about August, 1870. I believe the contract was in writing. The work under that contract was to be paid by money raised by the people of Delaware County; that is, the people of that county agreed if
773 we put the road under contract in that county to raise money sufficient to grade, bridge, and tie the same through the county.

Question. Was it the understanding of yourself, as president of the Davenport & S't Paul Railroad Company, that all the work & materials furnished under that contract by the Delaware Railroad Construction Company was to be paid for exclusively by the subscription of the people of Delaware County?

(Defendants objection to the question as incompetent & irrelevant.)

Answer. It was my understanding that all this work and material was to be paid for in that manner, and I would not at that time have put the road under contract in that county if it had been expected that I, as president of the Davenport & S't Paul Railroad Company,
774 would have been required to use their or my efforts in raising the money. I do not remember of ever having a conversation with the officers of the Delaware Railroad Construction Company as to the meaning of that contract. I might have had. I presume there was correspondence. I do not recollect it. The letter-books should show. I gave them a very clear intimation of my meaning of the contract, when I said in it, "all the money for the work hereinbefore specified to be paid by the citizens of Delaware County." That is the condition I annexed to the contract, & I would not have signed it without. I think I acted upon this throughout during my administration as president. I am not aware that any money was paid under that contract, except as obtained from these subscriptions; if any was paid otherwise
775 it was not as a matter of right, but as an accommodation.

Cross-examination:

At the time of making the contract, I do not know whether there had been an estimate made by an engineer. I do not think there was any change in the plans of cuts and fills during my administration. The executive committee of the Davenport & S't Paul Railroad Company authorized F. B. Doolittle, assistant treasurer of the company, to receive the money voted by tax in Delaware County to the railroad company, from the treasurer of that county. I think myself & the executive committee insisted that the engineering in Delaware County should be paid for out of the funds raised in Delaware County, but will not say positively that the engineer did not receive any money from any other source. I think the engineers were paid something out of the
776 Delaware County fund.

Redirect:

Some of the people of Delaware County, among the number Mr. F. B. Doolittle, came to me at various times and wanted the railroad continued through that county, and held out inducements that they could raise sufficient funds to grade, bridge, and tie the road, and these were the circumstances which brought about the making this contract. I presume I had several conversations with M'r Doolittle & others before making the contract, but while I cannot recollect the conversation dis-

tinctly I know I never agreed to make the contract upon any other terms than the condition that the people of that county should raise sufficient funds to grade, tie, & bridge, but when they sent me the contracts to sign they did not have these conditions inserted, so I inserted it before signing.

777 Question. Please state the circumstances under which Mr. Doolittle was authorized by you to receive the taxes voted to the Davenport & S't Paul Railroad Company in Delaware County.

Answer. He was authorized to receive them because it was a tax voted in Delaware County, and should be made available for the construction of the road through that county. I do not know what was done with the money. I never saw it. I suppose it went to the Delaware Railroad Construction Company, but I don't know it. I could not know it unless I paid over or saw it paid over. It was my intention in giving the order that it should be paid over to the Delaware Railroad Construction Company. I did not intend by giving M'r Doolittle that order to waive any rights under that contract.

778 Recross-examination:

I spoke of Doolittle & others coming to me. I did not intend by this to convey the meaning that they were the members of or represented the Delaware Railroad Construction Company, but I suppose they were citizens of Delaware County. I understood and now think the contracts were sent to me by the Delaware Railroad Construction Company, but it did not contain that condition, but I added it before signing same, and returned it. When I referred to the contracts being sent me I do not mean that they were sent to me by all the persons who came to see me about constructing the road through Delaware County.

(S'g'd) H. PRICE.

Sworn to before me and subscribed in my presence by the said Hiram Price, this 26th day of April, A. D. 1876.

(S'g'd) W'M K. WHITE,
United States Commissioner, District of Iowa.

779 UNITED STATES OF AMERICA,
District of Iowa, ss:

I, William K. White, a United States commissioner for the district of Iowa, do hereby certify that, in pursuance of the annexed notice, I caused to come before me, at my office in the city of Davenport, in the county of Scott and State and district of Iowa, on the 26th day of April, A. D. 1876, between the hours of four and seven o'clock, p. m., of said day, Hiram Price, who was then and there by me duly sworn and examined, and his examination reduced to writing and, after being by me read over to said witness, the same was subscribed and sworn to by him in my presence, and his said deposition is now herewith returned.

And I further certify that Mess'rs Grant & Smith were present and conducted said examination on behalf of Meyer & Dennison, plaintiff, and J. M. Brayton, esq., was present and cross-examined said
780 witness on behalf of the defendants, Del. Co. R. R. Co. & Delaware Railroad Construction Company.

Given under my hand and official signature, at Davenport, in said district of Iowa, this 26th day of April, A. D. 1876.

(S'g'd) W'M K. WHITE,
United States Commissioner, District of Iowa.

Commissioner's fees, $5; paid by Grant & Smith.

781 In the circuit court of the United States for the district of Iowa.

MOSES DE WITT LOOMIS ET AL.
vs.
THE DAVENPORT & S'T PAUL RAILROAD COMPANY ET AL.

To the Delaware Railroad Construction Company and the Delaware County Railroad Company:

You will take notice that on Thursday, the 26 day of April, A. D. 1876, the plaintiff, Lewis H. Meyer and William Dennison, will take the deposition of Hiram Price, to be used as evidence on the trial of the above cause, before W. K. White, a United States commissioner for the district of Iowa, at his office in Davenport, Iowa, beginning at 4 o'clock on said day, and then to continue until said deposition shall be completed.

(S'g'd) GRANT & SMITH,
Attorneys for Meyer & Dennison.

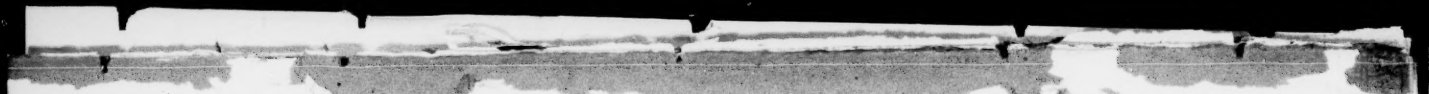
782 Due & legal service of the foregoing notice accepted and time waived.

(S'g'd) J. M. BRAYTON,
Att'y for Del. Co. R. R. Co. & Del. R R. Con. Co.

(Endorsed:) In the circuit court of the U. S. Moses DeWitt Loomis et al. vs. Dav. & S't Paul R. R. Co. et al. Deposition of Hiram Price. Filed May 13, 1876. E. R. Mason, clerk.

Com's fees, $5; paid by Grant & Smith.

(Indorsement on cover:) No. 209. The Delaware Railroad Construction Company and the Delaware County Railroad Company, appellants, vs. Lewis H. Meyer and William Dennison, trustees. Stipulation of co nse and addition to record. Filed October 3, 1877.



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Esavazos tal

Paso de los Tubernos

Arroyo Colorado

Arroyo Colorado

Boyas Arroyo

No. 38.

Manuel de la Garza Sosa.
Buena Vista

No. 42 Jose Salvador de la Garza,
El Espiritu Santo

No. 9
Rafael Garcia
Santa Ysabel

No. 35 Ygnacio Treviño
San Martin

Ejidos Boundary

Brownsville.

Ramirez

Stillman

Hale

Chaim

Ejidos Boundary

Matamoros.

Plaza

Santa Rosalia

Rio Grande

N

W

E

S

Var. 9°30 E

Laguna Madre

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MAP

OF THE

Espiritu Santo Grant

made by

HM Field

County Surveyor

Cam. Co. Texc.

Arroyo Colorado

Arroyo Colorado

Nº 33

Nº 38 Manuel de la Garza Sosa

Buena Vista

Nº 42 Jose Salvador de la Garza.

El Espiritu Santo

Nº 9

Rafael Garcia

Santa Ysabel

Doña Maria Josefa Cabasos's Claim

Nº 35 Ygnacio Trevino

San Martin Grande

Rio Grande

Rio Grande

Mexico

Matamoros

Plaza

Brownsville

Stillman & Hale's Claim

Ft Brown

Texas Boundary

Rio Grande

Santa Rosalia

Laguna

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Var 9°30' E